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Supreme Court of the United States.

OCTOBER TERM, 1904.

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MAR 22 1905
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THE RIVERDALE COTTON MILLS OF GEORGIA,
PETITIONER,

vs.

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY OF ALABAMA,

AND

THE HUGULEY MANUFACTURING COMPANY OF ALABAMA,
RESPONDENTS.

BRIEF OF

MARION ERWIN,

Solicitor, for Alabama & Georgia Mfg. Co. and Huguley Mfg. Co., on Review on Certiorari in Supreme Court.

ATLANTA, GA.:
The Franklin Printing and Publishing Co.
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ssignment of Errors, on Decree of the Circuit Court, September 29, 1902.

t.—That the said Circuit Court erred in not dismissing said ancillary bill for want of jurisdiction of the subject-matter the parties.

nd.—That the said Circuit Court erred in not dismissing leged ancillary bill, because it appears upon the face of said it it does not embrace a controversy wholly between citizens erent States, and that it is not an ancillary or dependent bill ch the Court would have jurisdiction irrespective of the citi- of the parties.

rd.—That the said Circuit Court erred in not dismissing said ancillary bill, because said bill is not ancillary to the original Robinson, Trustee, to which it was, by said decree com- of, declared to be ancillary, but was in fact an original bill t by an alleged purchaser of title to lands situate in the State bama, and in the right only of such a purchaser under decree bill of Robinson, Trustee, for the purpose of protecting the title so acquired, and the said cause not presenting a contro- between citizens of different States, the said Circuit Court ithout jurisdiction to render the decree complained of.

rth.—That the said Circuit Court erred in not dismissing leged ancillary bill, because Robinson, Trustee, being at the f the filing of his suit a citizen of Alabama, elected to the Alabama and Georgia Manufacturing Company, the a corporation, party defendant, and did not and could not he Alabama and Georgia Manufacturing Company, the Ala- corporation, a party defendant, as it would have ousted the of jurisdiction, and no decree in said Georgia suit against eorgia corporation could give the said Robinson, Trustee, or rson claiming under him, a right to enforce it against said na corporation by ancillary proceedings, by the granting of which the Court was without jurisdiction to grant on said l proceedings. And the same error is assigned as to the ey Manufacturing Company, the Alabama corporation.

h.—That the said Circuit Court erred in not dismissing said ancillary bill, because the same was a suit by which, through of injunction served in Alabama, the Alabama and Georgia acturing Company and the Huguley Manufacturing Com- both corporations of Alabama, resident in the Middle Dis- Alabama, and their solicitors of record in a suit pending in na, were brought before said Circuit Court, and although

timely objection was made by said defendants to the jurisdiction of said Circuit Court over their persons in said suit, they were perpetually enjoined by said decree complained of; the said Circuit Court not having jurisdiction of the persons of the defendants for the purpose of rendering said decree perpetually enjoining them.

Sixth.—That the said Circuit Court erred in rendering said decree complained of because the said alleged ancillary bill on which said decree was rendered was a suit for injunction for the protection of an alleged title to lands situate in Chambers county, Alabama, and against two Alabama corporations, and was a suit of a local nature maintainable only in a State court of Alabama, or in the Circuit Court of the United States for the Middle District of Alabama.

Seventh.—That said Circuit Court erred in rendering decree complained of because it enjoined and stayed proceedings in a Court of the State of Alabama in contravention of the provisions of section 720 of the Revised Statutes.

Eighth.—That the Court erred in rendering the decree complained of because there was no evidence or proof to support the relief granted: in this, that said decree was rendered upon said alleged ancillary bill, and the answer of respondents thereto, and with no evidence taken or heard in support of the allegations of said bill, save and except the record of the proceedings on the original bill of Robinson, Trustee, which did not extend to or establish the new matters set up and averred in said alleged ancillary bill, and which were not admitted in the answer of respondents, and which were put in issue by the answer of respondents, to wit: the allegations of said alleged ancillary bill (1) as to the identity in fact and in law of the Alabama corporations, complainants in the Alabama suit, with the defendant, Georgia corporations of the same name in Georgia; (2) as to the situation of said lands, the subject-matter of said Alabama suit, being in Georgia instead of Alabama; (3) as to there never having been any organization of the Alabama and Georgia Manufacturing Company of Alabama under its charter granted under the laws of Alabama; (4) as to said Alabama corporation never having had a place of business in Alabama; (5) as to the fact that it was the Georgia corporation (chartered afterwards) and not the Alabama corporation of the same name which was seized of and held title to the lands in Alabama; (6) as to the binding force against the Alabama corporation of the order of sale, sale and confirmation, all made after the charter of the Georgia corporation had expired, as averred in respondents' answer, and made in proceedings against the Georgia corporation and not against the Alabama corporation; (7) as to the Riverdale Cotton Mills, being a citizen of Georgia and not a corporation created under the laws of Alabama, as averred in the answer; affirmative proof of said facts in issue being essential for the relief granted by said decree complained of.

Ninth.—That the Court erred, in granting said decree complained , because the pleadings and proof on which it was rendered did ot make a case for the equitable relief granted.

Tenth.—That if the decree of the said Circuit Court made March , 1895, fixing the amount of the mortgage debt and declaring it reclosed, rendered against the Alabama and Georgia Manufac- ring Company, the Georgia corporation, before its charter ex- red, can be held to operate by way of estoppel on the corporation Alabama of the same name, the charter of the Georgia corpora- on having expired by limitation on March 21, 1896, before order sale, and before sale, and prior to the right of redemption being rred, the remedy of said alleged purchaser was to set up subroga- on to the rights of the mortgagees and to bring suit in the appro- iate court in Alabama on the said decree of March 30, 1895, and ainst the Alabama corporations for such relief as they are entitled thereon, and in due course to compel a conveyance to it of the operty, and there was no equity shown by the pleadings and oofs to authorize the relief granted under the said alleged ancil- y bill.

Eleventh.—That the Court erred in not holding that the deed om the commissioner appointed by the Circuit Court of the North- n District of Georgia, made under the decree of that Court, was effective to convey to the Riverdale Cotton Mills the title to the id property situate in Alabama, upon which alleged title the relief anted in said decree complained of was granted.

Twelfth.—That as to the Huguley Manufacturing Company, the imant of the equity of redemption of said lands and premises uate in Alabama, no decree having been rendered against it in id suit of Robinson, Trustee, and it never having been given its y in Court for the redemption of said property as such owner of e equity of redemption, as required by law, it was error in said rcuit Court to perpetually enjoin it from maintaining its said it for redemption.

Thirteenth.—Said suit of the Alabama and Georgia Manufactur- g Company, and Huguley Manufacturing Company, corporations Alabama, pending in the State Court of Alabama, being a suit r the purpose not only of redemption of said mortgage property t also for an accounting for rents and profits from other persons, wit: the Galeton Cotton Mills and West Point Manufacturing mpany, who are charged with receiving the rents and profits om September 6, 1892, to November 1, 1898, prior to the creation the Riverdale Cotton Mills and prior to the conveyance set up the Riverdale Cotton Mills, by the commissioner of the said Cir- it Court, under decree of October 15th, 1898, it was error in said rcuit Court, at the suit of said Riverdale Cotton Mills, brought in own behalf and in its right as such purchaser alone, to perpetu- ly enjoin said complainants in said Alabama suit from the prose-

cution of said suit for accounting from said other defendants to said Alabama suit who are not complainants in said alleged ancillary bill.

Fourteenth.—That the said Circuit Court erred in not dismissing said alleged ancillary bill, it having been made to appear from the pleadings and proofs that said State Court of Alabama had first acquired jurisdiction of the *res*, and suit for accounting, it being the right of said Riverdale Cotton Mills to file in that court a certified copy of the proceedings had in the case of Robinson, Trustee, and have full faith and credit given to said proceedings as far as in law and equity they should receive.

Fifteenth.—That said Circuit Court erred in not holding that it never acquired in said suit of Robinson, Trustee, jurisdiction of the *res*, so far as the property in Alabama is concerned, and that having failed to decree a conveyance and cause a conveyance to be made of said property from the defendants in that suit, to the purchaser at the commissioner's sale, that it was too late by ancillary bill commenced two years after final decree of confirmation, and five years after the expiration of the charter of the Alabama and Georgia Manufacturing Company, of Georgia, party defendant to that suit, to cure said defects in title by injunction against the Alabama corporations having the title thereto, and for that reason it erred in granting said decree.

Wherefore, the said appellants pray that the decree of said Circuit Court of the United States for the Northern District of Georgia, rendered in said cause on the 29th day of September, 1902, be reversed, and that said alleged ancillary bill of the said Riverdale Cotton Mills be dismissed.

STATEMENT OF THE CASE.

The Hearing was on Bill and Answer.

The decree of September 29, 1902, rendered by the Circuit Court of the United States for the Northern District of Georgia, which was reversed by the Circuit Court of Appeals, and which reversal is the subject of complaint on the present petition for certiorari, was rendered on a hearing on *bill and answer*, with no evidence introduced on the part of the Riverdale Cotton Mills, the complainant in the so-called ancillary bill to sustain its allegations, or to overcome the denials of fact made in the answers of the Alabama corporations, which, if true, not only took all the equities out of the so-called ancillary bill, but left the Georgia Court without any jurisdiction to enjoin the suit brought by the Alabama corporations in the State Court of Alabama.

"The rule is, that if no replication be filed the answer will be "taken as true, and no evidence can be given by the complainant to "contradict anything which is therein well alleged."

Brown *vs.* Pierce, 7 Wall, 212.
Reynolds *vs.* Crawfordville Bank, 112 U. S. 409.

Even where there are allegations in the bill material to the complainant's rights to the relief sought, and the hearing is not on bill and answer, the rule is:

"If the answer neither admits nor denies the allegations of the "bill, they must be proved upon the final hearing."

Young *vs.* Grundy, 6 Cranch. 51.
Brown *vs.* Pierce, 7 Wall, 211.
Commonwealth, &c., *vs.* Cummings, 83 F. R. 767.

The case as stated in the petition for certiorari is the case as made by the allegations of the so-called ancillary bill of the Riverdale Cotton Mills, and totally ignores that all the material allegations of the same were not only wholly overcome by the denials thereof in the answers of the respondents, but that the complainant introduced no evidence whatever to support the allegations of the bill. This would have precluded the complainant's right to the relief even if replication had been filed, instead of the hearing having been on bill and answer.

The cases cited by petitioners, Fritz *vs.* Stover, 22 Wall, 769; Central, etc., *vs.* Connecticut, etc., 104 U. S. 54, to the effect that it is too late to raise the point in the Appellate Court, that no replication was filed, are only applicable to cases where complainants have made out their case by evidence, and the parties have gone to trial on the evidence, without the defendants raising the objection of want of replication. They are not applicable to a case tried on bill and answer. Nor does it relieve the complainant from the necessity of proving every material allegation of the bill, if the case is heard otherwise than on bill and answer.

Under this rule the fact must be taken as true:

(1) That the complainants in the suit in the State Court in Alabama were, as is averred in said suit and in the answers filed to the so-called ancillary bill, in truth and in fact, corporations chartered and organized under the laws of *Alabama,* having a principal place of business in *Alabama,* and that they are corporations, in law and in fact, entirely distinct from the corporations of similar names chartered under the laws of Georgia, and which were sued in the bill of Robinson, Trustee, solely as such *Georgia* corporations.

(2) That the lands and the cotton-mills, the subject-matter of the suit in the State Court of Alabama, were, in truth and in fact, situate in the State of *Alabama.*

(3) That the Alabama and Georgia Manufacturing Company was duly organized under the laws of *Alabama.*

(4) That the said Alabama and Georgia Manufacturing Company of Alabama did have a place of business in *Alabama.*

(5) That it was the *Alabama* corporation, and *not* the Georgia corporation of similar name, which owned, and *holds the title* to the lands in controversy in the Alabama suit.

(6) That there was no binding force against the Alabama Corporation, owning the lands in Alabama, of the order of sale, sale and confirmation, all made after the charter of the Georgia corporation had expired, and made in proceedings against the Georgia corporation and not against the Alabama corporation, and the sale having been made in Georgia, contrary to the statute in such case provided, without advertisement in Alabama or notice to the Alabama corporations.

It is true that the record discloses that there was a motion made by the Riverdale Cotton Mills, complainant in the so-called ancillary bill, to strike the answer of the Alabama & Georgia Manufacturing Company of Alabama, and the Huguley Manufacturing Company of Alabama, from the files. But no action of the court was taken

on said motion, and by proceeding to a hearing with the answer in and without evidence, the question of the alleged insufficiency of the answer was waived.

1 Foster's Fed. Prac., Sec. 152, p. 352.
Fulton Bank *vs.* Beach, 2 Paige (N. Y.), 307.
Glossington *vs.* Thwaites, 2 Russ. (Eng.), 458, 461.

The answer, however, was not evasive or insufficient. While all the facts set up went to the jurisdiction of the court, they were facts which, if true, precluded the decree rendered.

If the complainant had put the facts set up in the answer at issue, or had put in any proof in contradiction of the facts pleaded in the Alabama bill and in the answer to the so-called ancillary bill, the appellants herein were prepared to establish these facts by making the appropriate proof:

First.—To put in evidence the deed conveying the lands, etc., in controversy, to the Alabama Company, more particularly identified and located as "The Alabama and Georgia Manufacturing Company, *of the State* of Alabama, Chambers County," and to show that there has never been any change of title since.

Second.—To show, by ancient maps of survey and field notes (made in 1829-1834), certified by the Commissioner of the United States Government Land Office at Washington, D. C., and by the Secretary of State of Alabama, and by competent civil engineers construing same, that the *entire* property was, as is averred by them, situate wholly in *Alabama*.

Third.—To *confirm*, by the records of said Alabama Company, made at the time of organization in 1866, the evidence that the lands in controversy were acquired, the mill main buildings and other factory buildings were constructed, the machinery installed, and the entire factory plant made a going concern, during the year 1866.

And in that connection, to show, by the same documentary evidence from the books of the said Alabama company, entered of record at the time, and otherwise, the following other material facts: That said *Alabama* company had been regularly organized after corporate meetings duly called and held in *Alabama;* that it established its fixed place of business in *Alabama*, at the place designated in its charter, and it, and the Huguley Manufacturing Company of Alabama, maintained said home office, with an agent thereat, uninterruptedly throughout up to 1892; that at said preliminary meetings called and held in February and March, 1866, the said incorporators and their associates adopted a Constitution and By-Laws, and elected officers; that they promptly opened books of subscription to the capital stock of said Company, and the full amount of said capital stock was there and then subscribed and a large propor-

tion *paid in*, and the fact of said subscriptions and payments thereunder were duly entered of record upon the records of said Alabama Company; and that, as the initial step preliminary to said formal organization and inauguration of said manufacturing enterprise, the lands and riparian rights in controversy, including certain improvements thereon, were acquired and title thereto taken in said *Alabama* Company—all of said proceedings having transpired and been formally and finally concluded *on and before the 20th day of March, 1866, antedating even the granting of the charter to the Georgia Company.*

Fourth.—And by the same documentary record evidence, and as is in large part indicated by the record now before the Court, said complainants were and are prepared to prove that the lands, and manufacturing plant, mills, machinery, etc., respectively, were not only acquired and constructed at the time and in the manner stated, but all were *paid for* with the money so subscribed and paid into the treasury of the said *Alabama* Company, pursuant to said subscriptions by *its* shareholders to *its* capital stock, and that too, it may be observed, (a) *fifteen years before* any mention, in the record, of the first meeting, *in Georgia*, of stockholders of any corporation styled as "The Alabama and Georgia Manufacturing Company," and (b) *five years before* there was any thought of opening or maintaining, for convenience, any second office at West Point, Ga.

Fifth.—As complainants were prepared to prove, and as is, indeed, disclosed by the record, the scheme originally contemplated, to wit, of utilizing the water power of the Chattahoochee river, by the construction by the Georgia corporation of dams and the erection and establishment of an independent manufacturing plant on the *Eastern* or *Georgia* side, to which territorial jurisdiction said projected Company *was definitely restricted and confined* by the express limitations under Sec. VI, of its charter, was afterwards wholly abandoned, not one acre of land having been acquired, and not one building erected by said *Georgia* corporation, as such.

And lastly, to show that The Alabama and Georgia Manufacturing Company (the *Alabama* corporation) was never made nor served as a party to any litigation under the proceedings in the Troup county, Georgia, court, instituted in 1888, and referred to in the record of the Robinson suit, but that it was the *Georgia* company of the same name, *only*, which was so made or joined as a party thereto, under the so-called "stockholders' bill" of "A. T. Dallis *et al. vs.* W. H. Huguley & Co."

As the case was, however, heard on bill and answer, each one of these substantive defenses, well pleaded in the answer, must be taken as *true*, and can not be taken as modified or weakened by reference to pleadings of other corporations alleged by the complainant (petitioner) to be the same corporations, or even by reference to

pleadings of the same corporation in other courts in which the same issues were not in the mind of the pleader, and which are or may be of easy explanation if the case were open to trial on the evidence The truth of the allegations of fact in the answer to the alleged ancillary bill can not be challenged on this hearing by the complainant.

The cases cited by Solicitors for petitioner, to the effect that new facts set up in the answer in avoidance and not responsive to the bill, must be supported by evidence on the part of the defense, see:

Clarke *vs.* White, 12 Pet. 178-190;
Seltz *vs.* Mitchell, 94 U. S. 580;
Farley *vs.* Kittson, 120 U. S. 303, 317;

relate to cases heard on the *evidence* and not to a case heard on bill and answer.

The rule on a hearing on bill and answer, as stated by Mr. Justice Gray for the court, is:

"All new facts alleged in the answer, are deemed admitted, as "upon demurrer to an answer at law."
In re Sanford Fork, etc., Company, 160 U. S. 247-257.

THE FOUR CORPORATIONS.

There are four corporations, on the identity and mutual relations of which the case turned:

(a) *"The Alabama & Georgia Manufacturing Company,"* under which name certain individuals were incorporated *by the act of the Legislature of Alabama* of February 7, 1866, with principal office in Chambers County, Alabama, and authorized to erect and conduct certain cotton mills on the Alabama side of the Chattahoochee river.

See charter, Record, p. 494.

(b) *"The Alabama & Georgia Manufacturing Company,"* under which name certain individuals were incorporated by *act* of *the Legislature of Georgia* of March 21, 1866, with principal offices at Columbus and La Grange, Georgia, and authorized to erect and conduct certain cotton mills on the Georgia side of the Chattahoochee river.

See charter, Record, p. 529.

(c) *"The Huguley Manufacturing Company,"* under which name certain individuals were incorporated February 27, 1890, *under general laws of the State of Alabama,* with principal office in Chambers County, Alabama.

See charter, Record, p. 531-535.

(d) *"The Huguley Manufacturing Company,"* under which name certain individuals were incorporated *under general laws of the State of Georgia,* with principal office at West Point, Georgia.

A copy of the charter of the last mentioned corporation is not in the Record. But the fact of the incorporation of a company in that name in Georgia is specifically charged in the original bill filed by J. J. Robinson, trustee, against it in the Circuit Court of the United States for the Northern District of Georgia. (Record, p. 1.) And the answer of that corporation filed by its solicitor, N. J. Hammond, specifically admits that fact. (Record, p. 14.) Moreover the deposition of N. J. Hammond in the Robinson suit states, "I advised in the procurement of the charter of the Huguley Manufacturing Company, and have been its attorney in this and other matters in Georgia since." (Record, p. 26.)

The fact that a corporation by that name was created and organized under the laws of Georgia is also specifically averred in the so-called ancillary bill of the Riverdale Cotton Mills, (Record, p. 473,) and in its petition for certiorari to this court. It is true that in the answer of the Alabama corporations to the so-called ancillary bill it is stated *on information* that the Huguley Manufacturing Company was not incorporated in Georgia. It is admitted now that this information was erroneous. But it is distinctly averred in the said answer of the Alabama corporations to the so-called ancillary bill, (Paragraph ninth, Record, p. 508,) that neither of said Alabama corporations were ever parties to the Robinson suit.

Since the Alabama corporations were cut off from offering evidence, by the decree on the bill and answer, this allegation of the answer must be taken as true. If they had been allowed to offer evidence it would have been shown that the corporation which was a party to the Robinson suit under the name of the Huguley Manufacturing Company, was the corporation chartered under that name on the petition of N. J. Hammond as attorney for certain individuals, by the Superior Court of Troup County, Georgia, on April 29, 1890, as shown by the records of that court. That the incorporators were not all the same as those who had been incorporated under the same name on February 27, 1890, under the laws of Alabama, (Record, p. 532,) and that the capital stock of the two respective corporations were different, their designated places of business were different, and their corporate powers and purposes not the same. Since we were cut off from making this proof, by a decree on bill and answer, the averment in the answer that the Huguley Manufacturing Company, the Alabama corporation, was not a party to the Robinson suit must be accepted as true. And this makes it clear on the record, as it stands, that there were four separate and distinct corporations; two created under the laws of Alabama, and two created under the laws of Georgia.

THE ROBINSON BILL.

J. J. Robinson, Trustee, of Alabama,

versus

The Alabama and Georgia Manufacturing Company of Georgia, and the Huguley Manufacturing Company of Georgia, and William T. Huguley, Trustee, of Georgia.

Bill in Circuit Court of the United States for the Northern District of Georgia, Filed January 21, 1891.

On January 21, 1891, in the United States Circuit Court for the Northern District of Georgia, J. J. Robinson, a citizen of *Alabama*, as one of the trustees for mortgage bondholders, filed his bill against the mortgagor, the Alabama and Georgia Manufacturing Company, averred to be a *corporation* created under the laws of *Georgia*, and a citizen of the State of *Georgia*, and resident of the Northern District of *Georgia*, and against the Huguley Manufacturing Company, the alleged purchaser of the property subject to the mortgage, averred to be a *corporation* created under the laws of *Georgia*, and a citizen of Georgia, resident of said district, and against W. T. Huguley, the other trustee for the mortgage bondholders, charged with having conflicting interests, and averred to be a citizen of *Georgia*, resident in said district.

(Record, p. 1.)

The property, covered by the mortgage or deed of trust, to secure $65,000 of bonds, is therein described as consisting of the following property in Harris County, Georgia:

(a) "All of a large island in the Chattahoochee river, designated "as Island No. 6, containing one hundred and forty-three acres "(143), more or less. Also Island No. 9, containing seven (7) "acres, more or less. Also a small island between Islands No. 6 and "No. 9, upon which the east end of the factory building rests, con- "taining four (4) acres, more or less. All of said three above de- "scribed islands being in the 20th district of *Harris County, Georgia.*"

And the following property in *Chambers County, Alabama*, to wit:

(b) "Also a tract or parcel of land lying on the west side of the

"Chattahoochee river, *opposite* the above described islands, bounded "on the east by said river, beginning at a point on the west bank of "said river, nearly opposite the center of the seven (7) acre island, "at a black gum, at or near a place known as Sell's Corner; thence "in a straight line to a point where the land owned in 1868 by Mrs. "Freeman, Job Ross, and James Campbell joined, known as the Ross "and Freeman corner, to a pine stake; thence in a line to a branch "near said stake; thence in a line down said branch to said river; "thence down the western bank of said river to the beginning point, "containing sixty-five and 23-100 (65.23) acres, more or less, *lying "and being in Chambers County, State of Alabama,* and being a "part of section twenty-eight and section twenty-nine (28 and 29) "township twenty-one (21), range twenty-nine (29), as well as a "forty (40) foot right of way from the factory building to the pub- "lic road leading from West Point, Georgia, to Berlin, Ala., at any "point where the factory company may locate it, *including all tene- "ments and improvements, including the cotton mill and machinery "therein or thereto belonging, and all water privileges and riparian "rights now or hereafter owned or enjoyed by the said party of the "first part."*

(Record, pp. 5, 6.)

The prayers of the bill were:

1. That an account be taken as to what was due on the bonds.
2. For foreclosure and sale.
3. That a receiver of the property be appointed.
4. For injunction against defendants from interfering with the property.
5. For general relief and *subpœna.*

(Record, p. 3.)

But no receiver was ever appointed and no injunction was ever granted.

(Record, p. 8.)

There was no service of *subpœna* on the bill. (Record, p. 488.) But service was acknowledged and appearance entered by Counsel for the two defendants named and sued, to wit: the Alabama and Georgia Manufacturing Company (the Georgia corporation), the Huguley Manufacturing Company (also alleged to be a corporation of Georgia), and W. T. Huguley (*personally*), claimed to be a citizen of Georgia.

(Record, p. 8-9.)

Demurrers and answer were also in due course filed by the said defendant Georgia corporations.

(Record, p. 9-11 and 14-22.)

The said answer of the Huguley Manufacturing Company and Alabama and Georgia Manufacturing Company, (the Georgia corporations,) was filed by N. J. Hammond as solicitor, and in paragraph numbered (1) it is distinctly averred that "The citizenship and residences of all the parties named in said bill are admitted as alleged."

It further appears that the deposition of N. J. Hammond was taken in that cause January 20, 1892, and he there testified: "I advised in the procurement of the charter of the Huguley Manufacturing Company, and have been its attorney in this and other matters in Georgia since."

(Record, p. 26.)

It further appears that the said Huguley Manufacturing Company (the Georgia corporation) set up in its answer a claim that it had bought the equity of redemption owned by the said Alabama and Georgia Manufacturing Company (the Georgia corporations) in said mortgaged premises in January, 1890, at a sale made in Harris County, Georgia, by a receiver under a decree of the Superior Court of Troup County, Georgia

(Record, pp. 15-7.)

It does not appear from anything in the Robinson suit, that the Alabama and Georgia Manufacturing Company (the Alabama corporation) was ever a party to the alleged Troup County, Georgia, proceeding, or that any proceeding was had therein which could have divested it of its title and ownership to the mills and property situate in Alabama, and on that proposition the Alabama and Georgia Manufacturing Company (the Alabama corporation) has never had its day in court.

Nevertheless the Alabama and Georgia Manufacturing Company, and the Huguley Manufacturing Company (the Georgia corporations) did set up, in answer to the Robinson bill, their own alleged claim of right, and contested said proceedings for several years until they finally lost.

It is unnecessary to go into all the details of the proceedings had under the Robinson bill. It is sufficient to say that the first foreclosure and sale had under the Robinson bill was held by the Circuit Court of Appeals to be null and void, and the same was set aside.

Alabama & Ga. M'f'g Co. *vs.* Robinson, 6 C. C. A., p. 79.

Second Decree for Foreclosure March 30, 1895.

After other proceedings had, the Circuit Court for the Northern District of Georgia, on March 30, 1895, rendered a second decree

foreclosing the mortgage for part of the mortgage debt on the rights and properties of the said defendant, the Alabama and Georgia Manufacturing Company (the Georgia corporation) and against the right of any person claiming under *it* since the date of the mortgage. The decree directed a sale of the factory and other property situate in Alabama as well as the islands alleged to be in Georgia, after an advertisement in the Georgia papers only, and directed the said sale to be made by its commissioner at Hamilton, Harris County, Georgia, on June 4, 1895.

(Record, p. 356-362.)

The sale was not made at the time appointed, but on March 10, 1896, the court amended its decree by ordering the sale to be made on May 5, 1896, after advertisement, as in said decree of March 30, 1895, provided.

(Record, p. 383.)

The charter of the Alabama and Georgia Manufacturing Company Expires Before the Sale.

In the meantime and prior to the sale, the charter of the Alabama and Georgia Manufacturing Company (the Georgia corporation) expired by limitation.

A copy of the charter granted by the General Assembly of Georgia on March 21, 1866, is in the Record, p. 529. It is also published in the Acts of the General Assembly of Georgia for 1866. This Georgia corporation became dissolved by operation of law, and became legally dead, on March 21, 1896.

The Act of the General Assembly of Georgia, of January 1, 1863, carried into the Code of 1867, as Section 1677, and now found in Code of 1895, as Section 1851, provides: "Should any charter granted in future by the General Assembly to a private corporation be silent as to its continuance, *such charter shall expire at the end of thirty years from the date of its grant.*"

West End, etc., R. R. Co. *vs.* Atlanta St. R. R., 49 Ga. 151.
Central R. R. *vs.* State, 54 Ga. 404.

"By an existing law (Georgia Code, Sec. 1684) every corporation "is dissolved by expiration of its charter. As the Constitution de- "clares that laws general in their nature shall have uniform opera- "tion throughout the State, the Western & Atlantic R. R. Co. was "dissolved when its charter expired."

Logan *vs.* W. & A. R. R. Co., 87 Ga. 533.

Notwithstanding this fact, the complainant went on with his proceedings as if he were not dealing with a dead corporation, and paid no attention to it.

The Sale of May 6, 1896.

In pursuance of the terms of the decree of March 30, 1895, and order of March 10, 1896, the commissioner sold on May 6, 1896, at Hamilton, Harris County, Georgia, all the mortgaged property, including the factory and property admitted to be situate in Chambers County, Alabama. At this sale the property was bid in by one L. Lanier, then claiming to represent a majority of the bondholders and to be acting solely for and on behalf of the holders of the bonds of the Alabama and Georgia Manufacturing Company (Record, p. 390) for the sum of $66,000, and the purchaser to assume whatever liability might be adjudged in favor of the Huguley Manufacturing Company of Georgia on its claim for back rents and profits claimed by it.

This sale was confirmed by the decree of June 25, 1896, which provided that:

"It is ordered, adjudged and decreed that said sale be, and the "same is hereby, confirmed in all respects, and that said Samuel C. "Dunlap, as such commissioner, be and he is hereby authorized and "directed to convey to said purchasers named, all and singular the "property and the property rights of every description described in "said decree, *upon the purchasers complying with the terms of "sale.*"

(Record, p. 395.)

It does not appear from the record in the Robinson case that the conditions of the sale were ever complied with by the purchaser.

Over two years after the bid, to wit, on September 22, 1898, Lanier filed in court a petition in the cause in which he stated that he had not been able to control the bonds, and prayed further time in which to pay for the property, and that he be allowed to pay for the property in cash, and take a deed to it himself or to such person as he might direct.

(Record, p. 440.)

This petition was granted by the court on October 15, 1898. The said Lanier was given 40 days within which to make payment in cash, and a direction made that when the clerk should certify to the fact of payment of the money into court, that the *commissioner* should make a deed to the purchaser for the property.

(Record, p. 445-446.)

There never was any decree in the Robinson suit directing the *mortgagor* or *trustees under the mortgage to make a deed to the purchaser and they never did.* The only indication in the record that the commissioner ever made such a deed to the purchaser, is the allegation made by the Riverdale Cotton Mills in its so-called

ancillary bill, in which it alleges that in pursuance of the order of October 15, 1898, "a deed was executed by direction of the said L. Lanier, by the commissioner of said court appointed to conduct the said sale, conveying the title to all the said property to your orator, and your orator paid all the purchase money therefor into court, as required by order thereof."

(Record, p. 477.)

In that state of the record, on December 2, 1898, the said, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company (the *Georgia* corporations) appealed from the decrees of sale, and of comfirmation, to the Fifth Circuit Court of Appeals, and those decrees were affirmed.

Huguley Mfg. Co. *vs.* Galeton Cotton Mills, 94 F. R. 269 (decided May 16, 1899).

An effort was then made to take the case up under application for *certiorari*, but failed.

Huguley Mfg. Co. *vs.* Galeton Cotton Mills, 175 U. S., 726.

Finally, on May 16, 1899, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company (the *Georgia* corporations), and William T. Huguley, trustee, appealed from the decree of the Circuit Court of Appeals, but the appeal was dismissed by the United States Supreme Court for want of jurisdiction.

Huguley Mfg. Co. vs. Galeton Cotton Mills, 184 U. S. 290 (decided February 24, 1902).

THE ALABAMA CASE.

The Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, Corporations Created and Organized Under the Laws of Alabama,

versus

The West Point Manufacturing Company, the Galeton Cotton Mills and the Riverdale Cotton Mills, Corporations Under the Laws of Alabama, and J. J. Robinson, Trustee, a Citizen of Alabama, and William T. Huguley, Trustee, a Citizen of New York.

In the First District of the Northeastern Chancery Division of State of Alabama. Filed May 2, 1901.

The bill sets forth the charter of "The Alabama and Georgia Manufacturing Company," by the Legislature of Alabama, under Act of February 7, 1866 (Record, p. 486), and attaches copy of the charter.

(Record, p. 494.)

The bill recites that this company, to wit, "The Alabama and Georgia Manufacturing Company of *Alabama," was seized and possessed of certain property,* the same described in the mortgage to Robinson, Huguley and Yancey, trustees, *supra,* except that all the property is charged to lie in Alabama.

(Record, pp. 486-8.)

It avers the execution, by the said the Alabama and Georgia Manufacturing Company of Alabama, of the mortgage, in January, 1884, to Robinson *et al.,* trustees.

(Record, p. 487.)

It sets forth the proceedings had under the bill by Robinson, trustee, against the Alabama and Georgia Manufacturing Company, the *Georgia* corporation, created by Act of the Legislature of Georgia, of March 21, 1866 (487-8), and charges that the Alabama and Georgia Manufacturing Company, the *Alabama* corporation, was not a party to the suit; and further charges that W. H. Huguley, president of said corporation, a citizen and resident

of *Chambers County, Alabama,* was never served with either notice of said alleged default of interest, or notice of said suit of foreclosure.

(Record, p. 488.)

It charges that the property was not advertised in the State of Alabama, nor was any sale, or pretense of sale, conducted in said State.

(Record, p. 488.)

It charges that the Galeton Cotton Mills, a corporation organized only under the laws of *Alabama* (attaching charter, Record, pp. 495-7), which went into possession of the property on September 6, 1892, under the first sale made by the commissioner of the Circuit Court of the Northern District of Georgia, which was declared void, remained in possession and operated the plant up to November, 1898, when the Riverdale Cotton Mills went into possession, claiming under the alleged deed from the commissioner of the Circuit Court of the Northern District of Georgia, under decree of October 15, 1898.

(Record, p. 489.)

It charges that the West Point Manufacturing Company, a corporation of Alabama, was the *principal,* practically the sole stockholder in both the Galeton Cotton Mills, of Alabama, and the Riverdale Cotton Mills, of Alabama, and as such has received all the rents and profits derived from the operation of said property in controversy, from September 6, 1892, to the time of filing the bill, May 2, 1901.

(Record, p. 489.)

It charges that these rents and profits, from September 6, 1892, to May 6, 1896 (the period covered by the alleged accounting had in the Georgia proceedings), amounted to $228,000, and from May 6, 1896, to May 2, 1901, to over $300,000. A sum largely in excess of the mortgage debt.

(Record, pp. 489-490.)

It charges that the entire factory plant and all the lands appurtenant, described in the mortgage, including even the one island, artificially formed, and not used in connection with the factory, are situate in *Alabama.*

(Record, pp. 490-491.)

It averred that all of the judicial proceedings in Georgia are absolutely null and void in so far as it concerns or affects the *title* of the Alabama and Georgia Manufacturing Company (the *Alabama* corporation), and of the Huguley Manufacturing Company (the Alabama corporation), to the lands and property in Alabama.
(Record, p. 491.)

It charges that the equity of redemption in said Alabama property has not been cut off.
(Record, pp. 492-3.)

It prays redemption of the said mortgaged property, and an accounting for the rents and profits, the defendants being given proper credits for their just claims.
(Record, pp. 492-3.)

Answer of Riverdale Mills et al. Filed in Alabama Suit.

To this bill the West Point Manufacturing Company, the Galeton Cotton Mills, and the Riverdale Cotton Mill filed their answer (Record, pp. 510-527), and the case, while pending argument at Opelika, Alabama, and being held for decree in vacation, was afterwards stopped by the proceedings for injunction on the alleged *ancillary* bill in Georgia, hereinafter described.

THE SO-CALLED ANCILLARY BILL IN GEORGIA

The Riverdale Cotton Mills of Georgia

versus

The Alabama and Georgia Manufacturing Company, The Huguley Manufacturing Company, (Averred to be Corporations Under the Laws of Georgia), J. M. Chilton, of Montgomery, Alabama, and Welles, Bennett & Welles, of Washington, D. C., Solicitors, Etc.

In the Circuit Court of the United States, for the Northern District of Georgia.

On June 10, 1901, a bill was filed in the Circuit Court of the United States for the Northern District of Georgia, by the Riverdale Cotton Mills, averring itself to be a corporation created under the laws of *Georgia,* against the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, averred to be corporations created under the laws of *Georgia,* and against their solicitors, J. M. Chilton, of Montgomery, Alabama, and Welles, Bennett & Welles, of Washington, D. C., which bill, it charges, is *"ancillary"* to the original bill filed by Robinson, trustee.

(Record, 473, *et seq.*)

Complainant charges that it received a deed from the *commissioner* of the Circuit Court of the United States for the Northern District of Georgia, for said lands, etc., in controversy, and paid the purchase money, under the aforesaid decrees of sale of March 30, 1895, March 10, 1896, and October 15, 1898, respectively.

(Record, 477.)

The bill is sought to be maintained solely in the right of such purchaser, and as dependent upon the original Robinson bill, for jurisdiction.

(Record, 473, *et seq.*)

The bill recites the proceedings had under the original Robinson bill in Georgia, and recites the filing of the bill (for redemption) in Alabama, by the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, claiming to be both corporations organized under the laws of *Alabama* (Record, pp. 473-486), and attaches a copy of same, with exhibits.

(Record, pp. 486, 495, 494, 500.)

It avers that each and all claims for relief, set up by complainants in the Alabama bill, were set up, or could have been set up or adjudicated, in the proceeding under the Robinson bill; that the Alabama bill seeks to again raise and have adjudicated the same matters and issues already adjudicated in the Robinson bill; that the Alabama bill is an attack on the decrees in the Robinson suit.

(Record, p. 479.)

It denies that the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, the complainants in the Alabama suit, were ever organized under the laws of Alabama, and avers that the only office or place of business ever had or maintained by either of them was in West Point, Georgia, and that the only property either of them ever owned, to wit, the property in the mortgage, was situate partly in Georgia and partly in Alabama, as therein described, and that they owned this as corporations organized under the laws of *Georgia.* (Record, p. 473.) It avers that the same Counsel represented the defendants in the Robinson bill that represent the complainants in the Alabama bill, and said Counsel are made defendants for purpose of *injunction* only.

(Record, pp. 480-1.)

Discovery and answer under oath is waived.

(Record, p. 481.)

The prayers are:

1. Temporary and perpetual injunction against defendants, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company (corporations of Alabama), and their attorneys or solicitors, restraining the prosecution of the Alabama suit or any similar suit.

(Record, p. 481.)

2. For *subpœna* directed to "The Alabama and Georgia Manufacturing Company," "The Huguley Manufacturing Company," and to J. M. Chilton and Welles, Bennett & Welles, their solicitors.

(Record, p. 482.)

Restraining Order.

On June 10, 1901, Judge Newman made an order allowing the bill to be filed. He also issued a *rule nisi,* requiring the defendants to show cause before him at Atlanta, Georgia, why injunction should not issue as prayed, and restraining the defendants from further proceedings in the Alabama suit in the meantime. He further directed that service of the order and of *subpœna* be made upon the defendants *wherever found.*

(Record, p. 500.)

No Service.

No service was made or attempted to be made on the Alabama and Georgia Manufacturing Company of Alabama, or on the Huguley Manufacturing Company of Alabama, but the Counsel of record for said companies in the Alabama suit, who were *individually* made parties defendant, acknowledged service for themselves individually.

The marshal also returned that he had served subpœnas on W. H. Huguley and W. T. Huguley (as individuals) at West Point, Georgia.

The Answer of the Alabama Corporations to the Alleged Ancillary Bill.

On June 21, 1901, the defendants indirectly, but actually, restrained, to wit, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, averring themselves to be corporations created and organized under the laws of *Alabama,* and suing as such corporations of Alabama, and their solicitors, filed their answer, to this rule to show cause and alleged *ancillary* bill.

1. The answer denies that complainants' bill is *ancillary* to the Robinson bill (Record, p. 506). It points out that on the face of the bill, it is averred that the complainant and the defendants, against whom relief is asked, are all citizens of *Georgia,* and that the court is without jurisdiction to entertain it.

(Record, p. 506.)

2. It squarely takes issue on the averments of the bill that the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company were not regularly chartered and organized under the laws of *Alabama,* and averred the *contrary* to be true.

(Record, p. 505.)

It sets out the fact of the charter of the Alabama and Georgia Manufacturing Company, by Act of the Legislature of *Alabama,* of February 7, 1866, and avers that the copy of the charter in the record is a correct copy.

(Record, pp. 508, 494.)

It sets out the fact of a charter of another corporation of the same name, by Act of the Legislature of *Georgia,* on March 21, 1866, a copy of which charter is attached (Record, p. 529) and points out that the two charters, while granted in part to the same persons, created separate and distinct corporations, *with no power of merger,* and each limited to the respective States creating them, for the acquisition of real property and for its operations.

(Record, pp. 505, 508, 529, 532.)

It also sets out a copy of the charter, granted the 27th day of February, 1890, in Alabama, to the members of the firm of W. H. Huguley & Co., namely: W. H. Huguley, W. T. Huguley and J. H. Nolan, and their associates, J. M. Chilton and T. H. Whitaker, as incorporators, to the corporation entitled "The Huguley Manufacturing Company," and sets out in full the facts and ceremonies attending the organization proceedings had and observed in Alabama and in conformity with the laws of Alabama, pursuant thereto; setting out, among other proceedings, the subscriptions to its capital stock and the *undertakings* of the subscribers thereto—all showing, on face of record, that the organization of said Alabama Company of this name, *was* duly and regularly perfected as such *independent Alabama* corporation, and with its fixed principal place of business and home office established, according to the terms of said charter, *"in Chambers County, Alabama, near the factory, lately known as 'The Alabama and Georgia Mills.'"*

(Record, pp. 505-6, 507-8, 531-6.

Said Charter, in Alabama, to the Huguley Manufacturing Company of *Alabama* made and contained *no* provision whatever which gave it the privilege or power to *merge or consolidate* itself with any other corporation, by whatever State such other might be created, and, as matter of fact and law, there was not, and could not have been, any such amalgamation or consolidation with any other corporation.

It avers that the Alabama and Georgia Manufacturing Company, and the Huguley Manufacturing Company, the *Alabama* corporations complainant, in the suit in Alabama, were never parties to the Robinson suit.

(Record, p. 508.)

It denies the jurisdiction of the Circuit Court of the United States for the Northern District of Georgia, over the persons of the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, corporations of *Alabama,* at the suit of the Riverdale Cotton Mills.

(Record, p. 508.)

It denies that the decree of foreclosure and sale, made under the Robinson bill, is conclusive upon the said Alabama and Georgia Manufacturing Company of *Alabama,* and the Huguley Manuturing Company of *Alabama,* so far as the property in Alabama is concerned, both by reason of the citizenship of the parties and the fact that the more valuable part, if not all, of the property decreed to be sold, was situate in the State of *Alabama.*

(Record, p. 506.)

It denies that the property, described in the mortgage, as being partly in Georgia and Alabama, forms part of an *indivisible* whole, but avers the *contrary*, and it is further averred that *all* of the property is in fact situate in *Alabama*, but if not all, that the only part of the property in Georgia—Island No. 6—is detached and isolated, and has never been used except for agricultural purposes.

(Record, pp. 507-8.)

It sets up that the charter of the Alabama and Georgia Manufacturing Company (the later *Georgia* corporation), expired by limitation of its terms on March 21, 1896. That the Circuit Court was without jurisdiction to make the sale in May, 1896, and confirmation, and the commissioner was without jurisdiction to make the deed, in 1898, to the Riverdale Cotton Mills, by reason of that fact.

(Record, p. 507.)

It denies the jurisdiction of the Circuit Court for the Northern District of Georgia, in this suit, to restrain the proceedings in the *State* Court of *Alabama*, its exercise being prohibited by Section 720, Revised Statutes of the United States.

(Record, p. 506.)

It is averred that the complainant had already pleaded to the Alabama suit and that the cause there had been submitted on demurrers for decision, before the proceedings had been instituted on this alleged *ancillary* suit.

(Record, pp. 506-7, 508, 510.)

The answer of defendants avers that the proceedings in Alabama were instituted in good faith; that there was no intention on their part to proceed in contempt of the Circuit Court for the Northern District of Georgia (Record, p. 509), and points out that the proceedings in Georgia and in Alabama were essentially different, the one having been for *foreclosure*, the other for *redemption* of the Alabama property, *the title to which*, it was averred, *had never been divested out of the Alabama corporation*, by the foreclosure and sale in Georgia against the *Georgia* corporation, nor by the deed of the *Commissioner* in Georgia.

(Record, pp. 508, 505, 486; Op. C. S. A. 556; 127 Fed 501.)

The prayers of the answer were for dismissal of the said bill for want of jurisdiction of the persons and subject-matter of said proceedings."

(Record, p. 509.)

Temporary Injunction.

On October 8, 1901, Judge Newman granted an injunction *pendente lite.*

(Record, pp. 535-540.)

A petition of the defendants for a writ of prohibition was denied by the Supreme Court of the United States, as premature.

In re Huguley Mfg. Co., 148 U. S. 297 (decided February 24, 1902).

Subsequent Proceedings.

The complainant filed no *replication* to the answer of the defendants.

No decree *pro confesso* was taken against any of the defendants, or exceptions filed to the sufficiency of defendants' answer.

A motion was made by the Riverdale Cotton Mills, to strike the answer of defendants, but the same was abandoned, and no action of the Court was had thereon.

The answer was not, however, evasive or insufficient. While all the facts set up went to the jurisdiction of the court, they were facts which, if true, precluded the decree rendered.

No Evidence Taken or Offered to Support the Allegations of the So-called Ancillary Bill.

No evidence whatever was taken by complainant to support the allegations of the alleged *ancillary* bill, put in issue by respondents' answer, other than the record of the proceedings in the original Robinson suit, which proceedings in no way covered the issues made by defendants' answer as to the jurisdiction of the court over the persons and subject-matter of the alleged *ancillary* suit; nor as to the want of identity of the defendants in the two proceedings, nor as to the facts averred in the answer which, if true, made the questions involved in the cases different.

The case was tried on bill and answer.

The Final Decree of September 29, 1902, on the So-called Ancillary Bill.

On September 29, 1902, the Circuit Court rendered a final decree, perpetually enjoining the defendants, and all other persons claiming under them, from further prosecution of the Alabama suit, and from the commencement or prosecution of any suit against the complainant, the Riverdale Cotton Mills, or against any other person or corporation by or through whom the Riverdale Cotton Mills derived the said property described, as to any matters involved and adjudicated or which could have been adjudicated in the said cause of Robinson, trustee, and perpetually enjoining the defendants from interfering with the possession of the Riverdale Cotton Mills.

(Record, p. 539.)

From this final decree the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, corporations of Alabama, and complainants in the Alabama suit enjoined, appealed to the Circuit Court of Appeals for the Fifth Circuit.

The Reversal of the Decree of the Lower Court by the Circuit Court of Appeals.

On January 12, 1904, the Circuit Court of Appeals reversed the decree of the Circuit Court for the Northern District of Georgia, rendered September 29, 1902, and directed the dismissal of the so-called ancillary bill for want of jurisdiction, without prejudice to the right of the appellee to defend the suit against it in the State Court, or otherwise maintain in any court of competent jurisdiction, any rights which it may have against the appellants.

In reaching that conclusion, the Circuit Court of Appeals, did not find it necessary to predicate its ruling upon but two out of the many points raised by the assignment of errors. It held:

(a) "As the appellants (the Alabama corporations) could not have been parties defendant to the Robinson bill without ousting the jurisdiction of the court, and that court could not pass a decree against their property rights in Alabama, and (b) did not make any effectual decree conveying title out of them (if it could have done so), and they are not assignees or privy in estate to the defendants in that bill, and claim an independent source of title, the cases of French *vs.* Hay, 22 Wallace 250; Dietsch *vs.* Huidekoper, 103 U. S. 494, and Root *vs.* Woolworth, 150 U. S. 401, on which appellee relies, do not apply here." (Record, p. 560.)

The Dissenting Opinion.

It is true that one of the Judges of the Circuit Court of Appeals dissented from the majority in the case at bar. He bases his views, it would appear, largely upon the idea that it was the duty of the Alabama corporations to have asserted their rights in the Robinson suit, and that a failure to disclose and assert them there was a fraud upon the court. He says: "When we really thought we were passing upon substantial issues and rights, and when honesty and fair dealing required the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company and their Counsel —unless they also were tricked—to make full disclosure of their citizenship and status as litigants." (Record, p. 563.)

We submit that if any imposition was practiced, or attempted to be practiced, on the jurisdiction of the Court, it was not done either by the Alabama corporations or by the Georgia corporations, but by Robinson, the trustee and plaintiff in the Robinson suit.

Robinson Knew of the Existence and Rights of the Alabama Corporations.

Robinson was a citizen and resident of the State of Alabama (Record, p. 1). He for a long time had been a resident of Chambers County, Alabama, where the mills were situate. He was Judge of Probate of that county, in 1884, 1890 and 1892, as shown by the record (Record, pp. 525, 533, 496). Robinson actually granted the charter of the Huguley Manufacturing Company of Alabama, and as such Ordinary certified to the organization of the company and to the contract by which the title to a part of the very property in Alabama in controversy, was conveyed to said Huguley Manufacturing Company of Alabama in 1890. (Record, p. 534.)

He at least was on constructive notice also of the charter of the Alabama and Georgia Manufacturing Company, the Alabama corporation, which was chartered by the General Assembly of Alabama, by Act of February 6, 1866. (Record, p. 494.)

In view of the fact that the mills were constructed by this company in Chambers County, Alabama, his connection with the case, and his prominent position as an official of the county, it is impossible to doubt, that he knew actually of the existence and rights of that company, as certainly as he is shown by the evidence to have had actual knowledge of the existence and rights of the Huguley Manufacturing Company of Alabama.

Being a citizen of Alabama, he knew or must have been advised by Counsel, that he could not sue the Alabama corporations either in the Federal Court in Alabama or in the Federal Court in Georgia. It was an extraordinary thing for him to leave his home county in Alabama, where all the mills and improved property were

situate, and to file in the Federal Court in Georgia a bill to foreclose a mortgage on Alabama property—and that too on a rush suit brought immediately upon default of an interest installment on the bonds, occasioned by the delay of a check sent through the mails and the intervening of a bank holiday. (Record, pp. 19-21.)

Robinson's extraordinary course can only be accounted for upon the ground, that he was acting upon the advice of Counsel who then had the same erroneous view of the law that his present Counsel are contending for *now*, viz.: that there was an identity in fact and law between the respective corporations created under the laws of Georgia and the corporations of the same name created under the laws of Alabama, and that he was at liberty to utterly ignore the existence and rights of the Alabama corporations. With full knowledge of the facts he elected to sue the Georgia corporations, in a court in which he could not as a citizen of Alabama sue the Alabama corporations without ousting the jurisdiction of the court. And he is entitled to the fruits of his victory over the Georgia corporations only.

In justice to the memory of Honorable N. J. Hammond, now deceased, who represented the Georgia corporations in the defence of the Robinson suit in the Circuit Court for the Northern District of Georgia, attention is called to the fact that he did not leave it doubtful in that record, that he appeared for and represented the Georgia corporations only.

This is shown not only by the answers filed by him to the bill, admitting the Georgia incorporation and citizenship, (Record, p. 14), the reference in the answer to the Georgia charter of the Alabama and Georgia Manufacturing Company (Record, p. 21), but also by his testimony that he had advised in the procurement of the Georgia charter of the Huguley Manufacturing Company and had been its attorney in this and other matters in Georgia since. (Record, p. 26.) Moreover it appears that the Alabama and Georgia Manufacturing Company (the Georgia corporation) had substantial rights in at least a part of the property mortgaged, viz.: the franchise and riparian rights granted to it by the Legislature of Georgia in its charter (Record, p. 529). It further appears that the Huguley Manufacturing Company (the Georgia corporation) had acquired, or thought it had acquired, rights in the same property, through a purchase at a receiver's sale made by the State Court of Harris County, Georgia. These Georgia corporations set up whatever rights they had, or thought they had, when sued as such Georgia corporations by Robinson. There was no misrepresentation by the pleadings or by the testimony as to the citizenship of the parties.

The Alabama corporations were under no obligation legally or morally to break into the Georgia suit, when the complainant with full knowledge of the facts, had deliberately elected to ignore them.

ARGUMENT.

WANT OF IDENTITY BETWEEN THE ALABAMA CORPORATIONS AND THE GEORGIA CORPORATIONS OF SIMILAR NAMES.

The only evidence before the court that can be invoked by the Riverdale Cotton Mills, complainants, as indicative of an identity between the Alabama and Georgia Manufacturing Company, defendant, as a Georgia corporation in the Robinson suit, and in the Alabama and Georgia Manufacturing Company, complainant in the Alabama suit, as an Alabama corporation, is, (a) The charter of "The Alabama and Georgia Manufacturing Company," by the Act of the of the Legislature of *Alabama*, of February 7, 1866, which appears as "Exhibit A" to the Alabama bill (Record, pp. 486, 494), and which is set up in the answer to the so-called ancillary bill. And (b), The charter of the "Alabama and Georgia Manufacturing Company," by the Act of the Legislature of Georgia, of March 21, 1866, which appears as "Exhibit C" to the answer to the so-called ancillary bill. (Record, p. 539.)

Aside from the fact that the two charters were granted to the same incorporators, and that many of the provisions were the same, the following radical elements are pointed out, showing that the Act of the Legislature was not a license to the Alabama corporation to do business in Georgia nor the grant of authority for the Alabama corporation to become a corporation of Georgia, or to consolidate with a Georgia corporation:

(1) The Alabama corporation was chartered a month and a half prior to the Georgia corporation, yet there is no reference in the charter of the latter to the charter or existence of the prior corporation;

(2) The charter of the Alabama corporation provided that "The place of business shall be *on the Chattahoochee river in the neighbor hood of Campbell's Mills in the county of Chambers and in the State of Alabama.*"

The charter of the Georgia corporation provided that "The place of business of said corporation shall be *Columbus, Georgia, or LaGrange, Georgia.*"

(3) The charter of the *Alabama* corporation gave it power—

"To have, hold, receive and purchase, possess and enjoy to them

"and their successors, all real and personal estate, of whatever kind "or amount said corporation may deem necessary to carry all the "objects of said corporation in full force and effect" * * * * * "That the objects of said corporation shall be the manufacture of "wool and cotton into thread and cloth (etc.). The place of busi- "ness shall be on the Chattahoochee river in the neighborhood of "Campbell's Mills in the county of Chambers and in the State of "Alabama; and to enable the said named persons in the first section "of the charter to carry out the purposes of this charter, they and "their successors and associates may control and use the water of the "Chattahoochee river, so far as the riparian rights of *this* State are "concerned, by locks, dams, canals or otherwise, for manufacturing "purposes generally."

The charter of the *Georgia* corporation gave it power:

"To have, hold, receive, purchase, possess and enjoy, to them and "their successors, all real and personal estate, of whatever kind or "amount said corporation may deem necessary to carry all the ob- "jects of said corporation into full force and effect." * * * * "That the objects of said corporation shall be the manufacture of "wool and cotton into thread and cloth, etc." * * * * "And to "enable the said persons named in the first section of *this charter*, "they and their successors and associates, may control and use the "water of the Chattahoochee river, so far as the riparian rights of "*this* State are concerned, by locks, dams, canals, or otherwise, for "manufacturing purposes generally; *provided*, that nothing in this "Act shall be so construed as to give said corporators, or their suc- "cessors, the privilege to interfere with, or disturb the *vested rights* "of any person or persons whomsoever, either on the east or west "bank or islands in the Chattahoochee river, and that said dams, "locks, and canals, shall not extend more than half way across said "river, etc." * * * *

"That said corporation shall have the right and privilege to build, "erect, make and preserve all dams, locks, canals, abutments, or "other needful structures half way across said Chattahoochee river, "as may be necessary to give them the greatest amount of water "power, and to use for that purpose the islands *contiguous* to their "lands for abutments and dams, *and to erect all needful buildings "on the EAST side of the river*, and to carry on any branch, or "branches, of the same in *this* State, that said charter authorizes "them to engage in, or carry on, in the State of Alabama."

(4) The charter of the *Alabama* corporation did not fix a limit to its capital stock, but provided:

"That said body corporate shall have power to prescribe the num- "ber of shares into which the capital stock of said corporation shall

"be divided, the mode in which it shall be taken and paid, trans-
"ferred or assigned, etc."

The charter of the *Georgia* corporation, on the other hand, provided:

"That the capital stock of said company shall be fifty thousand
"dollars, with permission to increase the same to one million dollars,
"which stock shall be divided into shares of one hundred dollars
"each." * * * *

"That said corporation shall not organize and commence business
"until the capital stock shall have been subscribed, and ten per cent.
"of the same paid in."

(5) There is absolutely *no* authority given in *either* charter to *consolidate with or merge itself* into any other corporation.

A consideration of the foregoing provisions of the respective charters shows that the intent of the Legislature of Georgia was to create a *new* Georgia corporation, with a new capital required to be paid in, with power to use the riparian rights of Georgia in the Chattahoochee river, and to erect needful buildings for factory purposes on the *East* (*Georgia side*) *only*, of the Chattahoochee river, and that said corporation was to have and maintain its principal office in Georgia, and that it was neither a license to or recognition of the pre-existing Alabama corporation, or authority to either corporation to consolidate or merge itself in the other.

Copeland *vs.* Memphis, etc., R. R., 3 Woods, 662.

Now consider, in this connection, the facts, well-pleaded by defendants, and which must be taken as *true* in the absence of proof by complainants, viz.: the averment of the Alabama bill:

"That said last mentioned corporation was duly organized under said charter (Act of General Assembly of Alabama, of February , 1866), and was afterwards *seized and possessed*" of the lands in Alabama, the redemption of which is sought.

And take this, in connection with the averments of the ninth paragraph of the answers of the Alabama and Georgia Manufacturing Company of Alabama and the Huguley Manufacturing Company of Alabama, averring their charters and organization under the laws of *Alabama*, and charging that:

"Respondents aver that these two corporations so organized are the parties complainant to the suit in Alabama. That said corporations were never parties as corporations under the laws of Alabama to said foreclosure proceedings."

And this, in connection with the fact that neither by admitted averment or proof is the Court justified in finding that the stock of

the two companies was held as a unit or that said companies were consolidated in law, or in fact, differentiates *this* case at bar from any other involving a *consolidated* company.

Nor is this a question of the validity of the mortgage attempted to be foreclosed in the Robinson suit. It may well be that the making of that mortgage may have been so ratified by the acts, both of the Alabama corporation and of the Georgia corporation, as to be binding upon each, and capable of being foreclosed against the Alabama corporation, in the Courts of *Alabama*, in respect to all lands covered by it *there*, and capable of being foreclosed against the Georgia corporation, in the Courts of *Georgia*, in respect to all lands covered by it there, but the question is one of the jurisdiction acquired by the Circuit Court of the United States over the Alabama corporation in a suit commenced and prosecuted solely against the *Georgia* corporation.

THE ALABAMA CORPORATIONS COULD NOT HAVE BEEN MADE PARTIES DEFENDANT TO THE ROBINSON SUIT WITHOUT OUSTING THE JURISDICTION OF THE COURT.

This is the principle laid down in Ohio & Miss. R. R. Co. *vs.* Wheeler, 1 Black, 286, and has been repeatedly affirmed. In that case the Court said:

"It is true, that a corporation by the name and style of the plain-
"tiffs appears to have been chartered by the States of Indiana and
"Ohio, clothed with the same capacities and powers and intended to
"accomplish the same objects, and it is spoken of in the laws of the
"States as one corporate body, exercising the same powers and ful-
"filling the same duties in both States. Yet it has no legal existence
"in either State, except by the law of the State. And neither State
"could confer on it a corporate existence in the other, nor add to or
"diminish the powers to be there exercised. It may indeed be com-
"posed of, and represent, under the corporate name, the same natural
"persons. But the legal entity or person, which exist by force of
"law, can have no existence beyond the limits of the State or sov-
"ereignty which brings it into life and endues it with its faculties
"and powers. The president and directors of the Ohio & Missis-
"sippi Railroad Company is, therefore, a distinct and separate cor-
"porate body in Indiana from the corporate body of the same name
"in Ohio, and they can not be joined in a suit as one and the same
"plaintiff, nor maintain a suit as one and the same plaintiff, nor
"maintain a suit in that character against a citizen of Ohio or
"Indiana in a Circuit Court of the United States."

Ohio & Miss. R. R. Co. *vs.* Wheeler, 1 Black, 286-298.

Quoted and approved in:

St. Joseph & Grand Island R. R. *vs.* Steele, 167 U. S. 163.

The converse of this proposition must be equally true, that is to say, the corporations of the two States could not be *joined* as *defendants* in a suit by a citizen by either State in a Circuit Court of the United States of either State.

"The defendant being a corporation of the State of Alabama, has "no existence in this State as a legal entity or person, except under "and by force of its incorporation by this State; and, although in- "corporated in the State of Tennessee, must, as to all its doings "within the State of Alabama, be considered a citizen of Alabama, "which can not sue *or be sued by another citizen of Alabama in the "courts of the United States.*"

Memphis and Charleston R. R. Co. *vs.* Alabama, 107 U. S. 581, citing:

Ohio & Miss. Railroad Co. *vs.* Wheeler, 1 Black, 286.

Railway Co. *vs.* Whitton, 13 Wall. 270, 283.

Robinson, Trustee for the bondholders, a citizen of Alabama, elected to bring suit in the Circuit Court of the United States for the Northern District of Georgia, against the *Georgia* corporation *alone*, he could not make the *Alabama* corporation a party defendant without ousting the jurisdiction of the Court. Whatever adjudication he obtained in that suit could, therefore, be binding only on the *Georgia* corporation, and must be taken as having been made without prejudice to the rights of the *Alabama* corporation.

47 Equity Rule.

THE ALABAMA CORPORATIONS COULD NOT HAVE BEEN MADE PARTIES DEFENDANT TO THE ROBINSON SUIT WITHOUT OUSTING THE JURISDICTION OF THE COURT, AND THEREFORE THEIR RIGHTS COULD NOT HAVE BEEN ADJUDICATED THEREIN.

"The rights and liabilities of a State corporation, which has been "incorporated in several States, as a corporation of States other "than that which created it, can not be adjudicated in a suit in a "Federal Court in which jurisdiction depends upon its citizenship "in that State, and would be ousted by citizenship in the other "States."

Louisville, etc., R. R. Co. *vs.* Louisville Trust Co., 174 U. S. 552.

Moreover, if the Circuit Court of the United States for the Northern District of Georgia could have no jurisdiction on the original bill, at the suit of a citizen of Alabama against the Alabama cor-

poration joined with the Georgia corporation, it surely could not acquire jurisdiction, merely by obtaining a decree against the Georgia corporations first, and setting up this decree in the same Court as binding on the Alabama corporation, and enforcing it as on ancillary jurisdiction.

Can the Court say to the Alabama corporation, we are without jurisdiction to hear you as a party defendant in this cause, because it would oust the jurisdiction of the Court, but we will adjudicate the right of the *Georgia* corporation, of the same name, and then we will hold this binding upon you, and that will give us ancillary jurisdiction over you, and enable us to perpetually enjoin you from asserting any right of redemption or other right in this property? The very statement of the proposition shows its absurdity.

THE DECISIONS AS TO THE EFFECT OF AN ADJUDICATION IN ONE STATE ON THE PROPERTY RIGHTS OF A CORPORATION CREATED UNDER THE LAWS OF ONE STATE, AND RECOGNIZED OR DOMESTICATED UNDER THE LAWS OF OTHER STATES, DO NOT TOUCH THE QUESTION IN THE CASE AT BAR.

Where there is but one corporation created by one State, but recognized or domesticated in other States for the purpose of police supervision, the rule now seems to be that for purposes of Federal Court jurisdiction such corporation is conclusively presumed to be composed of citizens of the State which *first* gave it corporate existence.

Railway Co. *vs.* Trust Co., 174 U. S. 552-563.
Southern Railway *vs.* Allison, 190 U. S. 326.

THE DECISIONS AS TO THE EFFECT OF AN ADJUDICATION IN ONE STATE ON THE PROPERTY RIGHTS OF A CORPORATION, WHICH IS THE RESULT OF A CONSOLIDATION OF SEVERAL CORPORATIONS CREATED UNDER THE LAWS OF SEVERAL STATES, DO NOT TOUCH THE QUESTION IN THE CASE AT BAR.

There is no question that where separate corporations have been created under the laws of several States, with charter powers authorizing them to merge their capital stock and consolidate, and where

they have in fact been consolidated, so that the capital stock is issued and held as a unit by one set of stockholders, and there is a single organization, that in such case the contract obligations of that one corporation may be enforced against it in any of the States creating it, although for the purposes of Federal Court jurisdiction it may be considered to be a citizen of the one State or the other as the circumstances of the case may require. The principle stated arises from the fact of merger and consolidation, an element totally absent from the case at bar, and a fact which counsel for petitioners wholly overlook in citing the cases on that line in support of their contention. See the cases cited:

Graham *vs.* Boston, Hartford & Erie R. R., 118 U. S. 161.
Nashua, etc., Co. *vs.* Boston, etc., Co., 136 U. S. 356.

CASES FURTHER DISTINGUISHED.

Muller vs. Dows, 94 U. S. 444.

In that case a suit was brought in the Circuit Court of the United States for the District of Iowa, by citizens of Missouri and New York, against two corporations alleged to be Iowa corporations. In the statement of the case by Mr. Justice Strong, it appears that one of the defendant corporations, the Chicago and Southwestern Ry. Co., was formed by the *consolidation* of two corporations of the same name, chartered under the laws of Missouri and Iowa respectively, and *consolidated* under authority of the laws of each State, which provided that such railroads were authorized to "merge and consolidate the stock of the respective companies, making *one* joint stock company of the railroads thus *connected.*"

And Mr. Justice Strong says:

"With these laws in force the *consolidation* of the Chicago and "Southwestern Railway was effected. The two companies became "one. But in the State of Iowa, that one was an Iowa corporation, "existing under the laws of *that* State *alone.*" (p. 447.)

It was further held that while for the purpose of Federal Court jurisdiction that "one" corporation was to be treated as a citizen of Iowa when sued in Iowa, that nevertheless the Circuit Court of Iowa had complete jurisdiction of the person of that "one" corporation, even in respect to rights or property held in other states. The Court say:

"It is here undoubtedly a recognized doctrine that a Court of "Equity sitting in a State, and having jurisdiction of the *person,* "may decree a conveyance *by him* of land in another State, and may "enforce the decree by process against the defendant." * * * "The "*mortgagors* who were foreclosed were enjoined against claiming

"property after the Master's sale, *and directed to make a deed* to "the purchaser in further assurance. And the Court can direct the "*trustees* to make a deed to the purchaser in confirmation of the "sale. We can not, therefore, declare void the decree which was "made." (pp.449-450.)

In that case, it will be observed, there was no effort to acquire jurisdiction over a corporation of *another* State by ancillary proceedings or otherwise, but by reason of *consolidation*, there being but the *one* corporation, and the Court having complete jurisdiction over the person of that one, the sole question was whether it could, under a trust deed, decree a sale of the railroad in both States and compel a conveyance. On the other hand, in the case at bar, *there never has been a consolidation*, and the Court never had or could have had jurisdiction of the *Alabama* corporations in the Robinson suit.

This case at bar is distinguished also from that of:

Graham vs. Boston, Hartford & Erie R. R., 118 U. S. 101.

In that case *one* corporation acquired *all* the property and franchises of several corporations owning railroads in several States, and there were legislative Acts of the respective States making that one corporation a corporation of each State respectively; but the capital stock was a unit with but one list of shareholders, owning the property everywhere, and the Court held, that under those facts, acts of the board of directors, authorizing the making of a mortgage, would be valid if done in either of the States in which it was created a corporation. The case arose by a stockholder coming into the same Court, which had foreclosed the mortgage, for the purpose of opening the decree, which, it was alleged, was based on a void mortgage, and the case did not turn on the *jurisdiction* of the United States Court; but in that case the Court say:

"One State may make a corporation of another State, as there "organized and conducted, a corporation of its own, *quoad* any "property within its territorial jurisdiction."

Graham *vs.* Boston, etc., R. R. Co., 118 U. S. 168.

"There are many decisions, both of the Federal and State Courts, "which establish the rule that however closely two corporations of "different States may unite their interests, and though even the "stockholders of the one may become the stockholders of the others, "and their business be conducted by the same directors, *the separate "identity of each* as a corporation of the State by which it was cre- "ated, and as a citizen of that State, is not thereby lost."

Nashua R. R. *vs.* Lowell R. R., 136 U. S. 375.

THE BILL OF THE RIVERDALE COTTON MILLS CAN NOT BE MAINTAINED AS AN ORIGINAL BILL FOR WANT OF FUNDAMENTAL JURISDICTION.

The bill of the Riverdale Cotton Mills of *Georgia* is predicated wholly upon the theory that it is a continuation of the suit of Robinson against the Alabama & Georgia Manufacturing Company, the *Georgia* corporation, and that there is, in fact, *no* Alabama corporation of that name, and that there is an identity between the Georgia corporation of that name and the Alabama complainant. The whole equity set up is based upon *res judicata*, and estoppel by reason of such alleged identity. Under said allegations of the bill, there being a want of diversity of citizenship between the complainant suing and the defendant sued, the bill can be maintained, if at all, *only* as an ancillary bill.

CAN NOT BE MAINTAINED AS AN ANCILLARY BILL, IF THE COMPLAINANTS IN THE ALABAMA SUIT BE DIFFERENT CORPORATIONS FROM THOSE DEFENDANT IN THE ROBINSON SUIT.

It is not enough for complainant here, to have alleged that the complainants suing in the Alabama suit are in fact the same corporations sued as defendant Georgia corporations in the Robinson suit. But on final decree it was essential to overcome the answer of defendants, and to *prove it*. If, in the absence of such proof the *contrary* is to be taken as true, as we have already seen it must be, the bill fails as an *ancillary* bill, because the jurisdiction over the defendants is predicated upon the theory that the defendants were parties to and bound by the former decree.

THE BILL NOT ANCILLARY.

French vs. Hay, 22 Wall. 250, distinguished:

In *that* case, French brought suit in the *State* Court of Virginia against Stewart and against Hay, to recover certain rents, and a judgment was rendered against Hay without giving him an opportunity to be heard. He came into Court and moved to open the decree. While this was pending, French brought suit against him in Pennsylvania, based on certified copy of that judgment. Hay removed the Virginia case into the United States Court, which, in due

course, declared the judgment against Hay null and void, and set it aside. Thereafter French obtained a judgment in Pennsylvania on the suit based on the Virginia judgment and was proceeding to enforce it, although the Virginia judgment had been set aside, in the suit between French and Hay in the United States Court as above stated. The United States Court in Virginia allowed Hay to maintain an ancillary bill against French, enjoining him from proceeding with his Pennsylvania judgment. The Supreme Court held that the bill was ancillary and dependent; that the Federal Court had first *jurisdiction of the whole* case, and having jurisdiction of the *person* of French, it could enjoin him from doing outside of the District things which it had power to prohibit within the District by reason of having jurisdiction of the whole controversy, and that in such a case, section 720 was not applicable.

This case is distinguished from the case at bar, in that the Circuit Court of the United States for the Northern District of Georgia neither had or could have jurisdiction in the Robinson suit of the *Alabama* corporations, complainants in the Alabama suit, for the want of proper diversity of citizenship, nor could that Court in a suit against the *Georgia* corporation make any decree affecting the rights of the Alabama corporations. So that the Circuit Court did not have jurisdiction of the whole case, nor jurisdiction of the *persons* of the complainants in the Alabama suit.

Root vs. Woolworth, 150 U. S. 401, distinguished:

The original bill *there* was brought to determine who had the right of possession and title to land, *within the territorial jurisdiction* of the Court.

The decree determined the right of possession and equitable title in favor of Morton, the complainant, and directed a deed of conveyance from Woolworth, the defendant, or by a commissioner, if he should not convey it in a specified time. He *failed* to convey and the commissioner made the deed to Morton, the land being in the State.

Morton's title was then assigned and transferred to Root. No writ of possession had been issued, but Root went on the land and divided it into town lots. Woolworth re-entered and refused to yield the premises to Root. The latter and Woolworth were citizens of the same State. The Court allowed Root to maintain a bill in the Circuit Court of the United States against Woolworth for the purpose of obtaining a writ of possession and enjoining Root from interfering.

It was held that the bill was ancillary to the original bill.

The Court say, as to the original decree, that it—

"established and concluded Morton's title against any claim of the

"appellant, and thereby necessarily included and carried with it the "right of possession to the premises as effectually as if the defendant "had himself conveyed the same. The decree in its legal effect and "operation entitled Morton to the possession of the property." (P. 412.)

The Court further say:

"The jurisdiction of Courts of Equity to interfere and effectuate "their own decree by injunction or writs of assistance in order to "avoid the litigation of questions once settled *between the same par-*"*ties,* is well settled." (P. 411-412.)

The Court further say:

"Such an ancillary bill may be brought by or against any person "claiming as assignee to *the party to the decree.* The appellee in "the present case occupies that position." (P. 411.)

In *that* case the defendant to the ancillary bill was the *same* defendant against whom an effective decree had been rendered in the original cause. There was no question involved of enjoining the proceedings in a *State* Court.

The bill in *that* case distinctly averred and the proof established "that in re-entering upon the premises Root claimed no rights there-"in and no title thereto except such as were asserted by him in oppo-"sition to Morton's right and title in the original suit." (P. 403.)

In the case *at bar,* the defendants sought to be enjoined in the so-called ancillary suit are *different* corporations in law and in fact from the corporations which were defendants to the original bill. They could not have been parties defendant to the bill without ousting the jurisdiction of the Court, and the Court was without jurisdiction to decree against *their property rights* in Alabama. Nor did the Court make any *effectual* decree conveying the title out of the defendants. Moreover, in the case at bar the defendants to the ancillary bill are not the assignees or privy in estate to the defendants in the original bill, and claim an *independent* source of title. Besides, they had set up their title in a *State* Court against the complainant in the so-called ancillary bill, and the latter had answered and submitted to the jurisdiction of the *State* Court *before* attempting to enjoin that proceeding.

The fundamental distinction between the two cases lies in the fact that in the Root case, the Court, by the ancillary proceeding, was putting in execution against Woolworth a valid decree against *him,* while in the case at bar the Court is asked to put in execution against two Alabama corporations decrees rendered against two Georgia corporations, the former not being assignees or privies to the parties to the former decree.

If the Court should hold (as we submit it ought not to do), that,

although the Georgia corporations were sued alone as such, and defended as such Georgia corporations, yet the Court will assume that it was the Alabama corporations which defended the Robinson suit, and that therefore they, having failed to plead their Alabama citizenship, the decrees heretofore rendered in the Robinson suit are binding on them; then we insist that only the *valid* decrees rendered in that suit can be so held. If the decree for the confirmation of sale and the deed to Alabama land made by Georgia commissioners be ineffectual or void, the equity of redemption is not cut off.

"It is the deed made to the purchaser actually transferring the "title of the parties to the suit, that terminates the mortgagor's "equity of redemption."

Chicago, etc., R. R. *vs.* Fosdick, 106 U. S. 71.

If, therefore, all that was *effectually* done in the Robinson suit, prior to the sale and commissioner's deed, be valid, even as against the *Alabama* corporations (which we deny), yet, when on the so-called ancillary bill it is shown that the defendants really sought to be bound by the suit of Robinson, a citizen of Alabama, were and are corporations of Alabama, the Court, being now apprised that there was a fatal want of fundamental jurisdiction from the beginning, can not go on now, with that knowledge, and grant further relief by injunction against the Alabama corporations, or complete the equitable relief which it did not give in the first instance, and which it might otherwise give on the Robinson bill if the want of original jurisdiction over the parties had not so been made to appear. It is not a case of change of interest after the original jurisdiction rightfully attached.

In other words, if there had been no Georgia corporations, but if the Alabama corporations had been sued on the allegations that they were Georgia corporations and had defended as such, then whatever valid final decrees were rendered while the Court had apparent jurisdiction on the face of the record might bind the Alabama corporations, but immediately upon its being made to appear that the defendants were Alabama corporations, the Court would be powerless to give any further relief on the Robinson bill, and would be bound to dismiss any supplemental bill brought by the same parties to perfect any *ineffective* decrees. For the same reason, a supplemental bill, seeking to cure defects in the former decrees in behalf of one claiming under Robinson, would have to be dismissed, because it seeks to obtain new relief not granted in the former proceedings or in execution of effective decrees, but on the allegations and equities of the old bill, *after the want of original jurisdiction* has become apparent.

These considerations differentiate this case from the Root *vs.* Woolworth case, even on the *theory* that the Alabama corporations were parties to the Robinson suit.

In the Root case the decree giving Morton the right of possession and directing the conveyance, and the conveyance, were all within the power of the Court and valid, and the supplemental bill was to carry those legal decrees into effect.

In the case at bar, the decree directing the commissioners to convey and the conveyance by the Georgia commissioners of Alabama lands were void, and the alleged ancillary bill seeks, *after* the want of fundamental jurisdiction has become apparent, to supply the place of these void decrees and acts, by an injunction based on the equities of the original bill.

EVEN IF ALL THE PROCEEDINGS IN THE ROBINSON SUIT WERE REGULAR, AND IF THE RIVERDALE COTTON MILLS ACQUIRED GOOD TITLE, ITS BILL BEING THAT OF AN ALLEGED PURCHASER TO PROTECT ITS TITLE AGAINST THE ALABAMA CORPORATIONS, NOT PARTIES TO THE SUIT, IT CAN NOT BE MAINTAINED ON ANCILLARY JURISDICTION IN THE FEDERAL COURT.

"That one claims title through a decree of a United States Court "does not create a Federal question so as to give jurisdiction."

Carson *vs.* Dunham, 121 U. S. 421, 429.

Prov. Sav. Soc. *vs.* Ford, 114 U. S. 630.

The purchaser, under such decree, is attacked in his title. The decrees of the Circuit Court are a part of his title and he relies on them.

Ralston *vs.* Sharon, 51 F. R. 702.

Wood *vs.* N. Y. & N. E. R. Co., 61 F. R. 236.

In Ralston *vs.* Sharon, 51 Fed. 702, it was held as follows:

"It being alleged in the bill that all the parties to the suit were "citizens of the State the Court has no jurisdiction, as defendants, "*not having been parties to the former suit,* and not being the per- "sonal representatives of the defendant, and the property, which was "the subject of the former contest, *not being any longer subject to* "*the order of the Court,* the bill was an *original* one, not dependent "upon or ancillary to, the original suit, *and a State Court of Equity* "*could give full relief.*"

The bill of the Riverdale Cotton Mills is not a bill filed to carry the decrees under the Robinson suit into execution; it sets up that said decrees have been *fully executed.* The equities set up are rights claimed to have been acquired under said decree, as a basis for new

relief, viz.: injunction against the Alabama corporations, which were not and could not have been parties defendant to the Robinson suit without ousting the jurisdiction of the Court.

"After a decree has been completely carried into effect, a motion "for injunction can not be made in the cause as it is out of Court."
Kerr on Injunction, p. 662.

Over such a bill brought by the Riverdale Cotton Mills, the State Court of Alabama would at least have *concurrent* jurisdiction with the Federal Court.
R. R. Co. *vs.* R. R. Co., 111 U. S. 505.

The Riverdale Cotton Mills, having filed its defence in the *Alabama* suit, they are committed to *that* forum. *The State Court jurisdiction attaching, its exercise can not be enjoined.*
Sec. 720 R. S.
Peck *vs.* Jenness, 7 How. 320.

That matter might have been set up in Federal Court by cross-bill will not prevent resort to other Court by independent bill.
Washburn & Moen Mfg. Co. *vs.* Scott & Co., 22 F. R. 710.
Christmas *vs.* Russell, 14 Wall. 69.

NO ESTOPPEL ON THE ALABAMA CORPORATIONS BY FAILURE TO PLEAD THEIR RIGHTS IN THE GEORGIA SUIT.

Neither of the Alabama corporations having been sued in the Georgia Court, and that Court being without jurisdiction to pass adversely upon their rights, the *Alabama* corporations were under no obligation, either legal or moral, either to break into that Court or to assert or defend their rights there.

In Wiser *vs.* Lawler, 189 U. S. 271, decided April 27, 1903, Mr. Justice Brown for the Court said:

* * * * "It would certainly be an exceptional case if a per-"son, *holding a deed of property which he has placed upon record,* "would be bound to disclose his title to a person contemplating pur-"chasing or making improvements upon the land, or would be "estopped from making his claim thereto by mere silence, since he

"has a right to rely upon the constructive notice given by the record; "although the rule would be otherwise in case of positive misrepre- "sentations upon his part."

Brant *vs.* Virginia Coal & Iron Co., 93 U. S. 326, 337.
Knouff *vs.* Thompson, 16 Pa. St. 357.
Brinkerhoff *vs.* Lansing, 4 Johns. Ch. 65.
Rice *vs.* Dewey, 54 Barb. 455.
Kingman *vs.* Grayham, 51 Wis. 232.
Sulphin *vs.* Dunbar, 55 Miss. 255.
Porter *vs.* Wheeler, 105 Ala. 451.

The authorities also recognize a distinction between mere silence and a deceptive silence accompanied by an intention to defraud which amounts to a positive beguilement.

Summer *vs.* Seaton, 47 N. J. Eq. 103.
Hill *vs.* Epley, 31 Pa. St. 331.
Markham *vs.* O'Connor, 52 Ga. 183.

HOW FAR THE RECORD IN THE ROBINSON SUIT CAN BE TREATED AS EVIDENCE IN THE SO-CALLED ANCILLARY SUIT.

The bill of the Riverdale Cotton Mills, paragraph V, refers to the records of the Robinson suit and says as to the same "which are hereby referred to and made a part of this bill of complaint, with leave to refer thereto as often as may be necessary."

The record in the Robinson suit was *never offered in evidence*, and yet it was before the Court and properly considered by it on the final hearing as part of the pleading, as evidence in the records of the Court of which it would take judicial notice. But evidence of *what?*

It was evidence of the fact that such and such matters were in issue between the parties to that cause, that such matters were adjudicated between said parties and that certain evidence was taken and certain agreements between Counsel for those parties were made as to evidence. But it was *not* evidence, in the Riverdale suit, of the truth of the facts about which evidence had been given by either party, nor was the adjudication binding, upon any other person not a party to the Robinson suit, or holding under such party.

Since the Alabama corporations were not parties to the Robinson suit, and could not be made parties defendant, and their *rights* could not be adjudicated therein (Railway Co. *vs.* Trust Co., 174 U. S.

552), and since they are not privies in estate, to use the language of Mr. Justice Holmes:

"Of course the adjudication in such suit does not conclude stran-
"gers."

Pardee *vs.* Aldridge, 189 U. S. 429-432.

Much less does evidence taken, or admissions made by parties in that suit as to their rights, bind *different* parties in the *other* suit.

Mr. Greenleaf, in his work on Evidence, under the head of "Admissibility and Effect of Records as Evidence," thus states the doctrine:

"It is a most obvious principle of justice, that no man ought to
"be bound by proceedings to which he was a stranger; but the con-
"verse of this rule is equally true, that by proceedings to which he
"was not a stranger he may well be held bound."

Greenleaf on Evidence, Vol. 1, Sec. 522.

"Under the term 'parties,' in this connection, the law includes all
"who are directly interested in the subject-matter, and had a right
"to make defence, or to control the proceedings, and to appeal from
"the judgment. This right also involves the right to adduce testi-
"mony, and to cross-examine the witnesses adduced on the other
"side. Persons not having these rights are regarded as strangers
"to the cause. But to give full effect to the principle by which par-
"ties are held bound by a judgment, all persons who are represented
"by the parties, and claim under them, or in privity with them, are
"equally concluded by the same proceedings. We have already seen
"that the term 'privity' denotes mutual or successive relationship to
"the same rights of property."

Greenleaf on Evidence, Vol. 1, Section 523.

"But as we have before remarked, the verdict and judgment in
"any case are always admissible to prove the fact, that the judgment
"was rendered, or the verdict given; for there is a material differ-
"ence between proving the *existence* of the record and its *tenor*,
"and using the record as the medium of proof of the matters of
"fact recited in it. In the former case, the record can never be con-
"sidered as *res inter alios acta;* the judgment being a public trans-
"action, rendered by public authority, and being presumed to be
"faithfully recorded. It is therefore the only proper legal evidence
"of itself, and is conclusive evidence of the fact of the rendition of
"the judgment and of all the legal consequences resulting from that
"fact, whoever may be the parties to the suit in which it is offered
"in evidence."

Greenleaf on Evidence, Vol. 1, Section 538.

"The distinction between the admissibility of a judgment as a "fact, and as evidence of ulterior facts, may be further illustrated "by the instances in which it has been recognized. Thus a judg- "ment against the sheriff for the misconduct of his deputy is evi- "dence against the latter of the fact, that the sheriff has been com- "pelled to pay the amount awarded, and for the cause alleged; but "it is not evidence of the fact upon which it was founded, namely, "the misconduct of the deputy, unless he was notified of the suit "and required to defend it."

Greenleaf on Evidence, Vol. 1, Section 539.

THE EFFECT OF THE ALLEGED STATE COURT RECEIVER'S SALE, IN HARRIS COUNTY, GEORGIA, OF THE MORTGAGOR'S EQUITY OF REDEMPTION IN THE ALABAMA PROPERTY, AFTER THE CREATION OF THE MORTGAGE, AS SET UP IN THE ROBINSON SUIT.

The answer of the Huguley Manufacturing Company, of *Georgia,* and the Alabama and Georgia Manufacturing Company, of *Georgia,* to the Robinson bill, set up among other things, that under certain judicial proceedings in Troup County, Georgia, in 1888, the property covered by the mortgage was, in January, 1890, sold, at receiver's sale, in Harris county, Georgia, subject to the mortgage, and bought in by certain persons, who conveyed all their rights and interest in the same to the Huguley Manufacturing Company. (Record, 15-17.)

There was an agreement of counsel in that suit, and expressly limited to that suit, also to the same effect. (Record, p. 118.)

So far as the record discloses, that receiver's sale and conveyance were also void as to lands in Alabama. If so, those proceedings can not be taken as divesting the Alabama and Georgia Manufacturing Company, the corporation of *Alabama,* the complainant in the Alabama suit, even of the equity of redemption.

Indeed, the ineffectiveness of the State Court receiver's sale made in Harris county, Georgia, in 1890, under the decree of the Superior Court of Troup county, Georgia, so far as it related to the Alabama lands, is distinctly averred in the answer of the Riverdale Cotton Mills to the Alabama bill. The averment of said answer is:

"That said sale was made and advertised in Georgia and neither "made nor advertised in Alabama, nor has said Huguley Manufac-

"turing Company (the Georgia corporation) ever acquired any title "or claim to the same by proceedings in Alabama." (Record, p. 518.)

But we insist that no part of this evidence is even admissible against the *Alabama* corporation, *not* a party to the Robinson suit.

It does not follow, however, even if the receiver's sale in Harris county, Georgia, be void, that the Huguley Manufacturing Company, the *Alabama* corporation, may not be entitled to the right of possession and the equities in these Alabama lands under the Alabama and Georgia Manufacturing Company, of *Alabama*. We are prepared to show, as averred in the Alabama bill, the *legal title* of the property to be in the Alabama and Georgia Manufacturing Company of *Alabama*, and joint equities in the property, in the latter and in the Huguley Manufacturing Company of Alabama, and a present right of possession in the latter, *irrespective of the proceedings in Troup and Harris counties, Georgia.*

These are the *rights* we are attempting to establish in the Alabama suit.

We submit that the *Alabama* corporations have a right to their day in Court, and are not precluded, either by the adjudication in the Robinson suit, or any evidence between the parties to *it* which may *seem* on its face to indicate that the Alabama and Georgia Manufacturing Company of Georgia lost all interest in the property to the Huguley Manufacturing Company of Georgia, by the Troup and Harris counties, Georgia, proceedings.

THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF GEORGIA HAD NO JURISDICTION OF THE SUBJECT-MATTER OF THE ROBINSON SUIT, SO FAR AS FORECLOSURE INVOLVED THE CUTTING OFF OF THE EQUITY OF REDEMPTION AND SALE AND CONVEYANCE OF LANDS IN ALABAMA, EVEN IF THEY BELONGED TO THE GEORGIA CORPORATION.

"It is an elementary principle of jurisdiction that a Court sitting "in one State, whether State or Federal, can not foreclose a mort "gage on and decree a sale of land situated in another State." * "The Courts of one State can have no jurisdiction over persons o

"property without its territorial limits, and any exertion of their "authority beyond those limits would be deemed an illegitimate as- "sumption of power, and be resisted as mere abuse."

Watkins *vs.* Holman, 16 Pet. 26.
Boyce *vs.* Grundy, 9 Pet. 275.
Northern Indiana R. Co. *vs.* Mich. Cent. R. Co., 15 How. 233.
Watts *vs.* Waddle, 6 Pet. 389.
Jones on Mortgages, Sec. 1444.
Farmers' L. & T. Co. *vs.* Postal Tel. Co., 55 Conn. 334.
Lynde *vs.* Columbus C. R. Co., 57 Fed. 993.
Black on Judgments, Vol. 2, Sec. 872.
Rorer on Intestate Law (2d ed.), Ch. XXI, 284 (N. 1), and cases cited.

In Davis *vs.* Headley, 7 C. E. Green, 115, the learned Chancellor Zabriskie declared:

"It is a well-settled principle of law in the decisions of England "and of this country, and acquiesced in by the jurists of all civilized "nations, that immovable property is exclusively subject to the laws "and jurisdictions of the Courts of the State or nation in which it "is located, and that no other laws or Courts could affect it."

"The jurisdiction of Courts over land is *local*. Neither State nor "Federal Courts can reach or confer title, nor sell under a decree "those which are situated in a different State from that in which "the Court sits."

Boyce *vs.* Grundy, 9 Pet. 275 *supra.*
Watkins *vs.* Holman, 16 Pet. 16.

"And so in the district as to United States Circuit Courts."

Northern Indiana R. R. Co. *vs.* Mich. Cent. R. R. Co., 15 How. 233.
Watts *vs.* Waddle, 6 Pet. 400.
Rorer on In Interstate Law (2d ed.), Ch. XXI, 284 (N. 1), and cases cited thereunder.

"And where a sale is made by virtue of an execution from the "United States Court, the State law directing the place of sale gov- "erns."

12 Plead. & Prac., 41, cited.
Smith *vs.* Cockrell, 6 Wall. 756.
Wayman *vs.* Southard, 10 Wheat. 1, and other cases cited.

By statutory enactment in nearly all the States, all sales of realty must be held *at the court-house in the county in which the property is situated.*

12 Ency. Plead. & Prac., citing:
Anniston Pipe Works *vs.* Williams, 106 Ala. 334.
Longworthy *vs.* Featherstone, 65 Ga. 165.
And numerous other cases cited from other States.

THE SALE, IN HARRIS COUNTY, GEORGIA, OF THE ALABAMA PROPERTY VOID, AS NOT CONFORMING TO THE STATUTE.

By Act of Congress of March 3, 1893, it is provided:

"That all real estate or any interest in land sold under any order "or decree of any United States Court shall be sold at public sale at "the court-house of the county, parish or city, in which the property, "or the greater part thereof, is located, or upon the premises, as the "Court rendering such order or decree of sale may direct."
27 Stat. L. 751, Sup. R. S., Vol. 2, p. 135.

The decree of sale did not provide for a sale on the premises, but at the court-house in the town of *Hamilton, Harris county, Georgia,* while under the admissions of the pleadings, the *entire* factory plant was *in Chambers County, Alabama,* and *all* the land, unless one detached and worthless island, used exclusively for agricultural purposes, and included in the mortgage, be in Harris County, Georgia, which is *disputed.*

The sale and confirmation were made after the charter of the Georgia corporation had expired, and that corporation was legally dead.

NEITHER THE DECREE IN THE ROBINSON SUIT, NOR THE DEED OF THE COMMISSIONER, COULD OPERATE TO CONVEY THE TITLE TO THE ALABAMA LANDS.

There was no provision in the decree of confirmation, either that the Alabama corporation, the owner of the legal estate, or that the trustees for the mortgage bondholders, should make title, and, it is

not claimed that *any* conveyance was made, except by the *commissioner* appointed by the Circuit Court.

The Supreme Court of the United States, in Carpenter *vs.* Strange, 141 U. S., 87-106, 35; 640-6, speaking through Mr. Chief Justice Fuller, held as follows:

"The real estate was situated in Tennessee and governed by the "law of its *situs*, and while by means of its power over the person "of a party a court of equity may in a *proper* case compel him to act "in relation to property not within its jurisdiction, *its decree does "not operate directly upon the property nor affect the title.* * * * "*The Court has no inherent power, by the mere force of its decree, "to annul a deed, or to* establish a title." (Hart *vs.* Sansom, 110 U. S., 151, 155, 28; 101, 103.)

"Hence, although in cases of *trust*, of *contract*, and of *fraud*, the "jurisdiction of a court of chancery may be sustained over the *per-"son*, * * * yet it does not follow that such a decree is in "itself necessarily *binding upon the courts of the State where the "land is situated.*"

"By its terms *no* provision whatever was made for its enforce-"ment against Mrs. Strange in respect of the real estate. *No con-"veyance was directed*, nor was there any attempt in any way to "exert control over her in view of the conclusion that the Court an-"nounced. *Direct action upon the real estate was certainly not with-"in the power of the Court*, and as it did *not* order Mrs. Strange to "take any action with reference to it, and she took *none, the courts "of Tennessee were not obliged to surrender jurisdiction to the "courts of New York over real estate in Tennessee, exclusively sub-"ject to its law and jurisdiction.*"

Carpenter *vs.* Strange, 141 U. S. 87-106, citing:
Story Confl. Laws, Sec. 543;
Wharton Confl. Laws, Secs. 288, 289;
Watkins *vs.* Holman, 41 U. S., 16 Pet. 25 (10:873).
Northern Indiana R. Co. *vs.* Michigan Cent. R. Co., 56 U. S., 15 How. 233 (14:674).
Davis *vs.* Headly, 22 N. J. Eq., 115.
Miller *vs.* Birdsong, 7 Baxt., 531.
Cooley *vs.* Scarlett, 38 Ill., 316.
Gardner *vs.* Ogden, 22 N. Y. 327.

"While a Federal Court of Equity may compel a conveyance of "lands in another State by a decree *in personam*, against a party "who holds the title, *it has no jurisdiction to itself transfer the title "to such lands by a sale and conveyance made through the Master "or commissioners.*"

Guarantee Co. *vs.* Delta and Pine Land Co., 104 Fed., p. 5.

MULLER vs. DOWS, 94 U. S., 444, RECONCILED.

In that case, there was a trust deed made by a single consolidated railroad company to trustees covering a railroad extending into two States. The bill was brought to execute this trust by a sale of the whole property as provided in the deed of trust. The Court had jurisdiction of the person of this one corporation.

In that case a suit was brought in the Circuit Court of the United States for the District of Iowa, by citizens of Missouri and New York, against two corporations alleged to be Iowa corporations. In the statement of the case by Mr. Justice Strong, it appears that one of the defendant corporations, the Chicago and South Western Ry. Co., was formed by the *consolidation* of two corporations of the same name, chartered under the laws of Missouri and Iowa respectively and *consolidated* under authority of the laws of each State, which provided that such railroads were authorized to "merge and consolidate the stock of the respective companies, making *one* joint-stock company of the railroads thus *connected*."

And Mr. Justice Strong, delivering the opinion of the Court, said:

"With these laws in force the *consolidation* of the Chicago and "South Western Railway was effected. The two companies became "one. But in the State of Iowa, that one was an Iowa corporation, "existing under the laws of *that* State *alone*." (P. 447.)

It was further held that while for the purpose of Federal Court jurisdiction that "one" corporation was to be treated as a citizen of Iowa when sued in Iowa, that nevertheless the Circuit Court of Iowa had complete jurisdiction of the person of that "one" corporation, even in respect to rights or property held in other States. The Court say:

"It is here undoubtedly a recognized doctrine that a Court of "Equity sitting in a State, and having jurisdiction of the *person*, "may decree a conveyance *by him* of land in another State, and may "enforce the decree by process against the defendant." * * * "The *mortgagors* who were foreclosed were enjoined against claim- "ing property, after the Master's sale, *and directed to make a deed* "to the purchaser in further assurance. And the Court can direct "the *trustees* to make a deed to the purchaser in confirmation of the "sale. We can not therefore declare void the decree which was "made." (P. 449-450.)

In that case, it will be observed, there was no effort to acquire jurisdiction over a corporation of *another* State by ancillary proceedings or otherwise, but by reason of *consolidation*, there being but the *one* corporation, and the Court having complete jurisdiction over the person of that one, the sole question was whether it could,

under a trust deed, decree a sale of the railroad in both States and compel a conveyance. On the other hand, in the case at bar, *there never has been a consolidation,* and the Court never had or could have had jurisdiction of the *Alabama* corporation in the Robinson suit.

A very thorough illustration of the proper course to be pursued, where property is in two States, will be found in the case of Wilmer *vs.* Atlanta and Richmond Air Line Company. In that case the existence of the two companies of different States was recognized, and the *two* companies appeared and were made *parties.* Furthermore, in regard to the property outside of the State, the Court expressly say:

"We are not asked to foreclose the mortgage. We are not asked "to confer on the trustees any power they do not already possess, "but simply to tell them what are their powers under their deed."

The Court also say: "The complainants may be required to file ancillary bills in other States," and the decree was that the *trustees* were directed to sell the road at Atlanta, Georgia.

Wilmer *vs.* Atlanta and Richmond Air Line Railway Co., 4 Woods, 447, 455, 456 and 457.

In the case at bar there never was any decree directing either the trustee or the mortgagor to make a deed to the purchaser; none was ever made, and the mortgagor defendant to the bill, the Alabama and Georgia Manufacturing Company, the Georgia corporation, was legally dead, by expiration of its charter (ante, p. 46), at the time of the sale and order of confirmation.

PROCEEDINGS AGAINST THE DEAD CORPORATION VOID.

The charter of the Alabama and Georgia Manufacturing Company of *Georgia* had expired on March 21, 1896, *prior* to the sale and *prior* to the conditional confirmation. Whatever may be said in favor of the validity of the decrees of March 30, 1895, and March 10, 1896, as fixing the amount of the indebtedness due and in default as against the Alabama and Georgia Manufacturing Company of *Georgia,* which was *then* in legal existence, it is clear that all the proceedings *subsequent* to March 21, 1896, when its charter expired, including the sale and confirmation, are *absolutely void.*

"The rule that the Master's report of a purchase must be abso-"lutely confirmed, before the contract can be considered as binding,

"applies equally to cases in which it is sought to compel a purchaser "to complete his purchase, as where it is sought to enforce the con- "tract against the vendor."

See Daniel's Ch. Pr., Sec. 1265, and cases cited.

"It is the deed made to the purchaser actually transferring the "title of the parties to the suit, that terminates the mortgagors' "equity of redemption."

Chicago, etc., R. R. *vs.* Fosdick, 106 U. S. 71.

The sale and confirmation were therefore judicial proceedings against a *dead* corporation, and therefore *void.*

"The judgment was therefore no more valid against a non-exist- "ing corporation than it would have been if rendered against a dead "man."

Pendleton *vs.* Russell, 144 U. S. 645.

As to the fact of the expiration of the charter, see ante p. 46,

May *vs.* State Bank, 2 Rob. (Va.), 40 Am. Dic. 726.

The only decrees rendered against the Huguley Manufacturing Company, even of *Georgia,* defendant in that suit, was a refusal to turn over to *it* the rents and profits, awarded in *its* favor as inter- vener, and decreed against the Galeton Cotton Mills for its deten- tion of the property under the first illegal sale, from September 6, 1892, to May 6, 1896. And there was a decree in its favor for $2,500 for its alleged private property not included in the mortgage wrongfully converted by the Galeton Cotton Mills.

THE RIGHT OF REDEMPTION WAS NEVER CUT OFF BY ANY OF THE PROCEEDINGS UNDER THE ROBINSON BILL.

Even if the decree of March 30, 1895, against the Alabama and Georgia Manufacturing Company of *Georgia,* alone, be valid as fixing the amount of indebtedness and determining that the rights of the parties, before the Court, demanded a sale of the entire prop- erty both in Georgia and in Alabama, if the property be partly in one State and partly in the other State, yet that decree did not and could not in itself cut off the right of redemption even of the parties to that cause; that right continued until there was a legal sale and legal confirmation of the sale, and a deed made conveying the title out of the mortgagor.

This Not a Collateral Proceeding

It is a well settled rule of jurisprudence that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceeding.

Williamson vs. Berry 8 *How.* 495.

"It is the deed made to the purchaser actually transferring the "title of the parties to the suit, that terminates the mortgagors' equity "of redemption."

Chicago, etc., R. R. *vs.* Fosdick, 106 U. S. 71.
Brine *vs.* Ins. Co., 96 U. S. 627.
Williamson *vs.* Berry, 8. How. 495-6.
Curtis *vs.* Millard, 14 Iowa, 129-130; 58 Iowa, 133.
Daniels' Ch. Pr., §1265, and cases cited.

Not only is the right of the Huguley Manufacturing Company of *Alabama* to redeem, not barred, because of the defects of jurisdiction of the Georgia Court to foreclose the lands in *Alabama*, and to make sale and conveyance by *commissioner*, as herein before pointed out, but it is not barred, *because no decree was ever rendered to that effect*, in the Robinson suit, against even the Huguley Manufacturing Company of *Georgia*, made defendant to that suit. And the foreclosure proceedings in Georgia could not operate as a proceeding *in rem* as to lands in Alabama.

The decree of foreclosure in the Robinson suit (Record, p. 380) was only against The Alabama and Georgia Manufacturing Company (the *Georgia* corporation), "and any one claiming under or through *IT*."

There can, therefore, be no ground for the contention that that decree cut off any rights of any one claiming under The Alabama and Georgia Manufacturing Company (the *Alabama* corporation), which was not a party to the Robinson suit.

IF THE RIGHTS TO REDEEM EXISTS, THEN A RIGHT TO BRING A BILL IN SOME COURT, FOR AN ACCOUNTING AND FOR REDEMPTION, MUST EXIST.

"A mortgagee in possession, whether in person, by trustee or re-"ceiver, or by tenant, is in equity accountable for the rents and "profits of the estate, and is bound to apply them in reduction of the "mortgage debt. The mortgagee is not allowed to make a profit "out of his possession of the estate; therefore, upon a redemption "of the mortgaged premises by any one interested in them he is "obliged to state an account of his receipts from the mortgaged "property, and he is entitled to allowance for all proper disburse-"ments made by him in respect of the mortgaged premises."

Jones on Mortgages, Sec. 1114.

"The liability of the mortgagee in possession to account always "arises when his entry and possession are in recognition of the "mortgage."

Jones on Mortgage, Sec. 1114.

In the Robinson suit, this Court held that the Galeton Cotton Mills, the purchaser under the first sale declared void, was to be treated as a mortgagee in possession. The same rule is aplicable to the Riverdale Cotton Mills, if the sale and title under which it claims to hold be illegal or ineffective.

"Where redemption is allowed after a foreclosure sale, if the "mortgagee purchases and enters into possession, he must account "for the rents and profits."

Jones on Mortgages, Sec. 1118.

"If a mortgagee enters into possession under a defective fore- "closure, he is in the position of a mortgagee in possession, and is "entitled to the crops and other products of the land and is account- "able for the rents and profits."

"An assignee stands in the place of his assignor in respect to the "account, whether he be an assignee of the mortgage or of the "equity of redemption."

Jones on Mortgages, Sec. 1119.

"After a mortgagee in possession has received payment of the "debt, he really holds the property in trust for the mortgagor."

Jones on Mortgages, Sec. 1159.

"Under an illegal sale, an accounting is allowed in Alabama, on "a bill for accounting and redemption."

Downs *vs.* Hopkins, 65 Ala., 508.

"The remedy by the mortgagor is by bill in equity for an account- "ing and redemption."

Farris *vs.* Houston, 78 Ala., 250.

"A mortgagee in possession by tenant or otherwise is accountable "for the rent and bound to apply it to lessen the debt."

Kellogg *vs.* Rockwell, 19 Coun. 446.

"Rents follow title, and the owner of the realty is the owner of "the rent."

Wm. Grant, receiver, *vs.* Buckner, 172 U. S. 237-8.

THE ALABAMA SUIT ENJOINED WAS SOLELY ONE FOR ACCOUNTING AND REDEMPTION. AT LEAST CONCURRENT JURISDICTION.

The Alabama bill is brought by the two Alabama corporations. It admits that the mortgage was executed by the Alabama and Georgia Manufacturing Company of Alabama, and does not seek to avoid the binding force of the mortgage as such on the complainants in that bill. While it does deny the binding force of the *foreclosure sale* of the Alabama property had in Georgia in proceedings against the *Georgia* corporation, as affecting the Alabama corporations, in whom it is averred *the title actually stands,* it fully concedes that whatever amount, if any, the mortgagees (or their agents in possession) may have paid on the mortgage debt to the mortgage bondholders by reason of the accounting of the Galeton Cotton Mills in the Georgia suit, or otherwise, should be credited on the total amount for which the mortgagees, or those holding under them, should account. (See paragraph 7th, of the Alabama bill.) It is therein further averred that said mortgagees or the corporations holding under them, have already received from the rents and profits more than sufficient to pay off the mortgage debt.

It will therefore be seen that the Alabama bill was:

(a) A suit between *different* parties from those in the Robinson suit.

(b) That the *object* of the two respective suits were different; the Robinson bill being a bill to *foreclose* the equity of redemption of the *Georgia* corporation in the mortgaged premises; the Alabama bill being one seeking to assert a right of *redemption* alleged to be in the *Alabama* corporations.

The pendency of the Robinson suit in Georgia, would not have deprived the *Alabama* Court of jurisdiction to maintain the Alabama suit, and much less could the fact that the former pendency of the Robinson suit be held to oust the jurisdiction of the Alabama Court over such a suit for redemption.

In Grant, receiver, *vs.* Buckner, 172 U. S. 237-8, the Court, in its opinion, concludes as follows:

"It is said in the brief that the Court first acquiring jurisdiction "has a right to continue its jurisdiction to the end. We fail to see "the application of this. The receiver *voluntarily* went into the "*State* Court, and having voluntarily gone there can not question "the right of *that* Court to determine the controversy between him- "self and the defendant. A similar proposition was often affirmed "in cases of bankruptcy, although by Section 711, Revised Statutes,

"the courts of the United States are given exclusive jurisdiction 'of "'all matters and proceedings in bankruptcy.'" (Citing authorities.)

And pursuant to this opinion, the Court held that Buckner was not precluded from obtaining the benefit of the right of set-off (of rents awarded him) in the *State* courts by the fact that the receiver was an officer of the *Federal* court, *or by any proceedings had in that Court, as the receiver voluntarily went into that Court;* and further held that the jurisdiction of the *State* court was clear, and affirmed *its* judgment accordingly.

The case of Glenn *vs.* Liggett, 51 Fed., 381, is in point. The Circuit Court of Appeals said therein:

"A suit in a Federal Court by a stockholder in behalf of himself "and other stockholders against a corporation and its officers, seek-"ing by injunction to correct abuses of administration, alleging in-"solvency and asking the appointment of a receiver to wind up the "business and pay the debts of the corporation, is not identical as "to interests of parties with a subsequent suit in a State Court by "a judgment creditor in behalf of himself and other creditors to "ascertain the validity of a deed of assignment from the corporation "to certain trustees, and asking the appointment of a receiver with "power to collect all assessments that may be made on the capital "stock, and otherwise care for and collect the assets and credits of "the corporation; and the pendency of the former suit and the ap-"pointment of a receiver therein does not deprive the State Court "of jurisdiction to entertain the latter."

"In such case the general rule that in case of concurrent jurisdic-"tion, the jurisdiction of the Court first taking control of the prop-"erty is exclusive, does not apply, it appearing that the receiver ap-"pointed by the Federal Court never had actual possession of the "corporation's property, excepting an insignificant portion which "was sold and the proceeds applied to the expenses of the receiver-"ship, that no assessments were ordered by that Court, and that the "receiver was discharged and *the case dismissed before any steps "were taken in the State Court* for the acquisition or distribution of "any property."

Glenn *vs.* Liggett, 51 Fed., 381.

THE COURT BELOW ERRED, IN GRANTING THE DECREE COMPLAINED OF, BECAUSE THE PLEADINGS AND PROOF, ON WHICH IT WAS RENDERED, DID NOT MAKE A CASE FOR THE EQUITABLE RELIEF GRANTED.

The complainants in the Alabama bill averred that they were corporations of *Alabama*, that *the title to the lands in question was in them and never had been in the Georgia corporations* of similar name; that the sale and conveyance by the *commissioner*, under the Georgia bill, was void as affecting their title to the lands in Alabama, and that their equity of redemption has never been cut off. and that the mortgage debt has long since been paid off by the receipt of over $500,000, of the profits by the mortgagees or those claiming under the mortgagees. If these allegations are true, there was equity in their bill for accounting and redemption.

The rights and equities of the Alabama corporations over which the Court could not have taken jurisdiction in the Robinson suit, for want of proper diversity of citizenship, could not be cut off by a decree in that cause.

Louisville, etc., Co. *vs.* Louisville Trust Co., 174 U. S. 552.

A bill, therefore, brought to enjoin such a suit, on the sole ground that the proceedings in Georgia, had cut off the equity of redemption of the Alabama corporations, a defence which is shown as matter of law not to be true, must be sustained by proof, and in the absence of such proof, the decree perpetually enjoining the suit for redemption, was a decree rendered without any equities to support it.

Moreover, as a matter of *practice*, if such a suit for redemption had been filed in the Circuit Court of the United States for the Northern District of Georgia, the proper practice would be to *defend* it, and *not* to *enjoin it*, and the same rule would apply if the redemption suit be brought in any other Court.

RAISING THE QUESTION IN THE CIRCUIT COURT OF APPEALS, OR IN THIS COURT OF WANT OF EQUITY IN THE DECREE APPEALED FROM, DOES NOT WAIVE THE QUESTION OF JURISDICTION OF THE CIRCUIT COURT OVER THE PERSONS OF THE ALABAMA CORPORATIONS.

The Alabama corporations, when actually enjoined and their hands tied by the preliminary injunction served upon their solicitors, came into Court, and raised the question of the jurisdiction of the Georgia Court over them, and confined their appearance and answer solely to facts, showing they were *Alabama* corporations, and that the Court had no jurisdiction over them or the Alabama property claimed by them, by way of ancillary proceedings to the Robinson suit. They stood on that defence alone, and left the complainant to make out its case by proof on all other facts averred in the bill. The Court ignored the defence of want of jurisdiction, and decreed on the whole bill. The defendants do not, therefore, waive their objection to the jurisdiction over their persons as Alabama corporations sued in Georgia, by excepting in this Court, to the decree as rendered for being without equity or proof to support it.

Southern Pacific Co. *vs.* Denton, 146 U. S. 203.

NO SERVICE.

The only attempt to make service or pretense of service on the Alabama corporations was (1) by restraining their solicitors, and (2) by service of process, *in Georgia*, on W. H. Huguley, and W. T. Huguley as individuals.

"No presumptions are to be indulged in favor of such a return "so as to give the Court jurisdiction over a non-resident corpora- "tion."

U. S. *vs.* American Bell Tel. Co., 29 F. R. 17.

Even if the service on W. H. Huguley and W. T. Huguley, as individuals, might, under some circumstances, be construed as service on the Alabama corporations of which they were officers or representatives, yet where it appears, from the complainant's own admissions in the record, that W. T. Huguley was, at the time, a resident and citizen of *New York* (Record, pp. 492 and 518), and that W. H. Huguley was a resident and citizen of *Alabama*, Chambers county (Record, p. 488), and that said corporations had ceased

to do business in Georgia for several years, such attempted service on officers of said Alabama corporations, who happened to be found in Georgia, is wholly ineffective.

THERE HAS BEEN NO WAIVER, BY THE ALABAMA CORPORATIONS, OF THE WANT OF JURISDICTION, IN THE GEORGIA COURT TO SUE THEM IN GEORGIA.

By making the solicitors for complainants in the Alabama suit, parties defendant to the bill of the Riverdale Cotton Mills, under averments that there were really no corporations of Alabama, and that there was an identity between the complainants there and the defendant Georgia corporations, parties to the Robinson bill, and by obtaining the temporary restraining order of June 10, 1901, restraining their solicitors from proceeding, the hands of the complainants in the Alabama suit were tied, without any actual service upon *them*, and they were forced to come in, in answer to the *rule nisi*, and raise the question of the jurisdiction of the Circuit Court of Georgia over them.

THE ANSWER LIMITED.

The answer of the Alabama and Georgia Manufacturing Company and of the Huguley Manufacturing Company, corporations of Alabama, asked a dismissal of the bill for want of jurisdiction, and no other appearance was entered. The defendants stood upon those objections. It was confined solely to the denial or averments of fact going to the want of jurisdiction in the Court, as to the subject-matter and the parties, or going to show that the bill could not be maintained, as an ancillary bill, by reason of any previous jurisdiction acquired over the persons of the defendants in the former suit against the *Georgia* corporations.

"Such objection to the jurisdiction is not waived by filing a de-
"murrer (or answer) for the special purpose of objecting to the
"jurisdiction, or by answering to the merits upon that demurrer be-
"ing overruled."

Southern Pacific Co. *vs.* Denton, 146 U. S., 203.

STATUTE OF LIMITATIONS NOT INVOLVED.

The point urged by the appellees in the Court of Appeals that the rights of the Alabama and Georgia Manufacturing Company of Alabama, had been barred by the adverse possession of the Huguley Manufacturing Company "for about ten years and a half," (the statute in Alabama being ten years,) has no merit in it. The Huguley Manufacturing Company of Alabama was not chartered and organized until February 27, 1890. (Record, pp. 531-5.)

Whatever possession it or the Alabama and Georgia Manufacturing Company of Alabama had, was ousted under the void sale made under the Robinson suit to the representatives of the Galeton Cotton Mills, confirmed by the Circuit Court of the Northern District of Georgia September 16, 1892, under which the Galeton Cotton Mills went into possession and retained it until after the said sale and decree were reversed by the Circuit Court of Appeals, and until after the second sale made by the Circuit Court under which the Riverdale Company went into possession under the confirmation order of October 15, 1898. (Record, p. 445.) The Alabama bill was filed May 2, 1901. (Record, p. 500.) There could, therefore, be no ten years adverse possession by the Huguley Manufacturing Company as against the Alabama and Georgia Manufacturing Company.

THE COURT ERRED, ON A BILL BROUGHT SOLELY BY THE RIVERDALE COTTON MILLS, AS A PURCHASER UNDER A DECREE OF OCTOBER 15, 1898, AND AS A CORPORATION CHARTERED AND ORGANIZED AFTER THAT TIME, IN GRANTING A PERPETUAL INJUNCTION RESTRAINING SO MUCH OF THE ALABAMA SUIT AS SOUGHT AN ACCOUNTING FROM THE GALETON COTTON MILLS, AND THE WEST POINT MANUFACTURING COMPANY, FOR RENTS AND PROFITS DURING THE PERIOD OF THEIR POSSESSION, FROM SEPTEMBER 6, 1892, TO OCTOBER 15, OR NOVEMBER 1, 1898, WHEN THE RIVERDALE COTTON MILLS' POSSESSION IS ALLEGED TO HAVE COMMENCED.

This proposition is elementary. Whatever equities or rights may exist in favor of the Galeton Cotton Mills and West Point Manufacturing Company, they were competent to set them up as matters of

defense in the Alabama suit, *as they have done.* As to the rents and profits between September 16, 1892, and October 15, 1898, they neither acquired or hold them under the Riverdale Cotton Mills, nor is any claim thereto set up by the Riverdale Cotton Mills by assignment or otherwise.

Yet the decree appealed from perpetually enjoins the Alabama suit against the Galeton Cotton Mills, and West Point Manufacturing Company, and enjoins the bringing of any new suit against those corporations. It is relief granted in favor of a *stranger* to the so-called ancillary bill, and as to rights in which the complainant in that bill has no concern.

THE JURISDICTION OF THE COURT OF APPEALS, AND OF THIS COURT.

An effort was made by the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company, the Alabama corporations, to obtain a writ of prohibition against the Circuit Court for the Northern District of Georgia, and mandamus, compelling it to dismiss the alleged ancillary bill for want of jurisdiction. The application was made just after the interlocutory order restraining the suit in Alabama was granted and before final decree. In denying this application as *premature,* the Supreme Court said:

"After final decree, an appeal to this Court would lie in respect of "the jurisdiction if the question were properly raised and certified, "or if issues were raised and decided, bringing the case within Sec- "tion 5 of the Act of March 3, 1891; or to the Circuit Court of Ap- "peals."

In re Huguley Mfg. Co., etc.; 184 U. S., 297; decided February 24, 1902.

The appellants elected to take the whole case to the Circuit Court of Appeals, and invoke its decision not only on the *jurisdictional* questions, but on the questions of *practice* involved, and the questions as to *want of equity* on the case as made to support the final decree granted against them.

MARION ERWIN,

Solicitor for Respondents.